

Section 482 of crpc and powers of quashing of fir



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CODE FOR CRIMINAL PROCEDURE PROJECT ON SECTION 482 and POWERS OF QUASH OF FIR SUBMITTED BY:- ANKITA VERMA TABLE OF CONTENTS 1.

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BIBLIOGRAPHY INTRODUCTION Sec 482 deals with Inherent powers of the Court.

It is under the 37th Chapter of the Code titled “ Miscellaneous”. The state high courts in India have been given supervisory and regulatory powers over the conduct of the lower criminal courts within their respective territorial jurisdiction, including inherent powers under section 482 of CrPC. Section 482 confers inherent powers on the state high courts to intervene in any criminal proceedings, to prevent abuse of the process of the court and to secure the ends of justice.

Faced with a false criminal complaint, a person can file a petition under section 482 of the CrPC with the state high court and seek quashing of the criminal complaint. Inherent powers u/s 482 of Cr. P. C. include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case.

Court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/s 482 of Cr. P. C. These powers are neither limited nor curtailed by any other provisions of the Code. However such inherent powers are exercised sparingly and with caution. Section 482 CrPC talks about the inherent powers of the high courts. This section reproduces section 561-A of the code of 1898 without any change. It does not confer any new powers on the high courts but saves such inherent powers which the court possessed before the enactment of CrPC.

Though the jurisdiction exists and is wide in its scope it is a rule of practice that it will only be exercised in exceptional cases. The section was added by the Code of Criminal Procedure (amendment) Act, 1923, as the high courts were unable to render complete justice even if in a given case the illegality was palpable and apparent. The section is a sort of 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.

The inherent power in the high is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The expression 'ends of justice' is not used to comprise within it any vague or nebulous concept of justice, nor even justice in philosophical sense, but justice according to law, statute law and the common law.

Inherent powers are in the nature of extraordinary powers available only where no express power is available to the high courts to do a particular thing, and where the express power does not negativate the existence of

such inherent power. The jurisdiction under section 482 is discretionary; the high court may refuse to exercise the discretion if a party has not approached it with clean hands. As per the scope of this section is concerned, it has a very wide scope. The inherent powers are only with the high courts and no other court can exercise these powers.

The high courts are bound to exercise such powers whenever there is injustice done by the court below. Some of the inherent powers of the high courts are: a) quashing of FIR. b) quashing of complaint. INHERENT JURISDICTION VESTED IN THE HIGH COURTS “ Saving of inherent power 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. The section was added by the Code of Criminal Procedure (Amendment) Act of 1923. The section envisages 3 circumstances in which the inherent jurisdiction may be exercised, namely: -to give effect to an order under CrPC, -to prevent abuse of the process of the court, -to secure the ends of justice. The jurisdiction of the high court is confined to the courts subordinate to it in the state for which the high court has been constituted. An application under section 482 cannot be entertained by any court other than the high court.

The inherent jurisdiction possessed by the high court under this section is not confined to cases pending before it, but extends to all the cases which may come to its notice whether in appeal revision or otherwise. Inherent powers under section 482 can be invoked only in the event when there is no other remedies open to the aggrieved party. The inherent jurisdiction of the

high court preserved under this section is vested in it by law within the meaning of article 21 of the constitution. The procedure for invoking the inherent powers may be regulated by rules which may have been or be framed by the high courts.

The power to make such rules is conferred on the high court by the constitution. Where the rules were previously framed, they continue in force by virtue of article 372 of the constitution. INTERFERENCE UNDER ARTICLE 226 FOR FIR QUASHING The power of quashing the criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the F.

I. R. or complaint and the extraordinary and inherent powers of Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor it can 'soft-pedal the course of justice' at a crucial stage of investigation/ proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code are a device to advance justice and not to frustrate it.

The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors that might be committed by the Subordinate Courts as it is the duty of the High Court to prevent the abuse of process of law by the inferior Courts and to see that esteem of administration of justice remains clean and pure.

However, there are no limits of power of the Court but more the power more due care and caution is to be exercised invoking these powers.

The Apex Court held that nomenclature under which the petition is filed is totally irrelevant and does not prevent the Courts from exercising its jurisdiction which otherwise it possesses unless there is a special procedure prescribed which procedure is mandatory. In a case the Hon'ble Supreme Court has indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section- 482 of the Code or under article 226 or 227 of the Constitution of India, as the case may be, and allow the law to take its own course.

The Court's power is limited only to examine that the process of law should not be misused to harass a citizen and for that purpose, the high Court has no authority or jurisdiction to go into the matter or examine the correctness of allegations unless the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion and that there is sufficient ground for proceeding against the accused but the Court, at that stage, cannot go into the truth or falsity of the allegations.

In Trisuns Chemical Industry Vs. Rajesh Agarwal ; Ors. the Supreme Court placed reliance upon its earlier judgment in Rajesh Bajaj Vs. State N. C. T. of Delhi ; Ors. , and observed that the inherent power of the High Court should be limited to very extreme exceptions. The said judgment was approved and followed by the Apex Court in Ram Biraji Devi Vs. Umesh Kumar Singh ; Ors. , wherein the Apex Court reiterated that the power can be used only in extreme exceptions where it is necessary to do so in the interest of justice.

INTERFERENCE IN INVESTIGATION IN CRIMINAL OFFENCES In the case of Janata Dal Vs. H. S. Chaudhary, the Supreme Court endorsed the law laid down by the Privy Council, that the statutory power of police to investigate cognizable offences could not be interfered with by the courts, (King Emperor Vs. Khawaja Nazir Ahmed) The same view was endorsed by Justice Chandrachud in the case of Kurukshetra University Vs.

State of Haryana where it was reiterated that investigation of criminal offences, was a field exclusively reserved for the Executive, through the police department, the superintendence over which, vested in the State Government. This Court further held that the Court and judicial process should not interfere at the stage of investigation . In the case of State of Haryana Vs. Chaudhary Bhajan Lal Justice Pandian laid down as follows: Investigation of offences is a field exclusively reserved for police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised..... the courts are not justified in obliterating the track of investigation The Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted.....

VIEW OF THE SUPREME COURT In the landmark case State of Haryana v. Bhajan Lal: A two-judge bench of the Supreme Court of India considered in detail the provisions of section 482 and the power of the high court to quash criminal proceedings or FIR. The Supreme Court summarized the legal position by laying the following guidelines to be followed by high courts in exercise of their inherent powers to quash a criminal complaint;- 1.

The criminal complaint can be quashed when allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, prima facie constitute any offence or make out a case against the accused person. 2. The criminal complaint can be quashed when allegations made in the complaint are so absurd and inherently improbable that on the basis of which no prudent person can ever reach a conclusion that there are sufficient grounds for continuing the proceedings against the accused person. . The criminal complaint can be quashed when the allegations made in the complaint and evidence collected in support of the complaint does not disclose the commission of any offence against the accused person. 4. The criminal complaint can be quashed when the complaint is manifestly attended with malafide or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused person and with a view to spite him due to private and personal grudge. 5.

The criminal complaint can be quashed when there is an express legal bar under any of the provisions of the CrPC or any other legislation (under which a criminal proceeding is instituted) to the institution and continuance of criminal complaint. Thus, if the high court is convinced that the criminal complaint does not disclose a cognizable offence and the continuation of an investigation is not based on sound foundations and would amount to an abuse of power of the police necessitating interference to secure the ends of justice, the high court will exercise its inherent power to quash the proceedings.

In *Pepsi Foods Ltd. v. Special Judicial Magistrate*, the Supreme Court of India observed that: “ Though the magistrate can discharge the accused at any

stage of the trial if he considers the charges to be groundless, this does not mean that the accused cannot approach the High Court under section 482 to have the complaint quashed if the complaint does disclose the commission of a cognizable offence against the accused person.

In this case the Supreme Court held that the order of the High Court refusing to quash the complaint on the ground that alternate remedy was available under the CrPC to the accused person was not proper. " However it has been held by the Supreme Court of India in Om Prakash Singh v. State of UP : That ' if a complaint discloses the commission of a cognizable offence, it would not be a sound exercise of discretion to quash the criminal complaint'.

AMENDMENT OF CODE OF CRIMINAL PROCEDURE ENABLING RESTORATION OF COMPLAINTS Submitted to the Union Minister of Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on the 22nd day of August, 2009. Inherent power of subordinate courts The subordinate criminal courts have no inherent powers. However, courts exist for dispensation of justice and not for its denial for technical reasons when law and justice otherwise demand.

Even though inherent power saved under section 482, CrPC is only in favour of High Courts, the subordinate criminal courts are also not powerless to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provision provided there is no prohibition and no illegality or miscarriage of justice is involved. All the criminal courts are having such an auxiliary power subject to restriction which justice, equity, good conscience and legal provisions demand provided it will not unnecessarily prejudice somebody else.

A Division Bench of the Kerala High Court has in the matter of State Prosecutor held that the subordinate courts have the inherent power to act *ex debito justitiae* (in accordance with the requirement of justice) to do the real and substantial justice for which alone they exist. The absence of any reference to any other criminal court in the said provision does not necessarily imply that such courts can in no circumstances exercise inherent power. Courts may act on the principle that every procedure should be understood as permissible till it is shown to be prohibited by law. Law commission's 141st Report

The 12th Law Commission of India in its 141st Report titled "Need for Amending the Law as regards Power of Courts to Restore Criminal Revisional Applications and Criminal Cases Dismissed for Default in Appearance" [1991]

The Law Commission in its 141st Report recommended amendment of section 482 of the CrPC for conferment of inherent powers also on all subordinate criminal courts other than the High court. THE ACTIVIST PHASE
The activist phase, in its present form, started from the necessity felt by the Supreme Court, to secure impartial investigation into the allegations of fake encounters, custodial deaths, and police torture.

While initially the Judges were content to direct inquiries by the local District and Sessions Judges, subsequently in several cases, the Court directed investigation by the CBI directly. Still the Court did not interfere in investigation There is no denial of the fact that the investigation and prosecution of criminal offences is lackadaisical. Yet the question to be considered is whether monitoring of investigation by Supreme Court or the High Courts is the appropriate remedy. Apart from the fact that monitoring of

investigation invariably makes the judicial pyramid virtually stand on its head, it has larger connotations.

The foremost consideration is, as to whether it is likely to result in denial of fair trial to the accused, and whether it amounts to adoption of a procedure which is unreasonable and is capable of falling foul of Article 21. In my view, whether this procedure violates Article 20 or 21 or not, in any case, it is not effective. The experiment in one of the cases in which this procedure was adopted by the Supreme Court has proved its futility. The conventional wisdom, on account of which, the courts refrained from interfering in investigation, was that the opinion of the Investigating Officer was not binding upon the courts.

Defects in investigation could be rectified by the trial Judges, by summoning other persons, found to be connected with the offences under section 319 of the Code of Criminal Procedure. The dignity and honour of the Courts would be better preserved, if they maintain the traditional distance from the Investigating agencies. In the end, it needs to be realised that investigation is a specialised job, which has to be conducted in the field, by persons adept at it. Various techniques and strategies are adopted by the Investigating Officer, and the task of ascertainment of truth, is long, arduous and painful.

The Courts' continued insistence on modernisation of investigative techniques and upgrading the tools of technology, by deploying scientific methods of investigation, are the only means that may succeed in the long run. Judicial monitoring of investigation is an aberration and the sooner it ends, the better it is for the administration of criminal justice system. Guidelines for exercising the inherent power -Where the allegations made in the

First Information Report or the 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. Where the allegations in the first Information Report and other materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code. -Where the uncontroverted 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 as case against the accused. Where, the allegations in the F. I. R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by as police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code. -Where the allegations made in the FIR or complaint 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. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. - 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 and with a view to spite him due to private and personal grudge.

It has been said there should be no undue interference by the High Court as no meticulous examination of the evidence is needed for considering whether the case would end in conviction or not, at this stage. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges. In *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Sharaful Haque & Ors.* the Hon'ble Apex Court held that criminal proceedings can be quashed but such power is to be exercised sparingly, carefully with caution and only when such exercise is justified by the tests specifically laid down in the statutory provisions itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. A case where the F.I. R. or the complaint does not disclose any offence or is frivolous, vexatious or oppressive, the proceedings can be quashed. It is, however, not necessary that at this stage there should be meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. The allegations have to be read as a whole. CONCLUSION " The judiciary has to play a vital and important role, not only in preventing and remedying abuse and misuse of power, but also in eliminating exploitation and injustice. For this purpose, it is necessary to make procedural innovations.....

The summit judiciary in India, keenly alive to its social responsibility and accountability to the people of the country, has liberated itself from the shackles of Western thought, made innovative use of

the power of judicial review, forged new tools, devised new methods and fashioned new strategies. " Soon thereafter, PIL was defined by Justice Bhagwati, in one of his articles entitled, " Social Action Litigation; the Indian experience", in the above words. So as per the above discussion we have seen that how the high court uses its inherent powers and how important it is for the high courts to use these powers.

Section 482 has a very wide scope and its really important for the courts to use it properly and wisely. Many a times it has been observed that when there is an issue of money for eg. Any money matter then the petitioner instead of filing a civil suit files an FIR against the other person just to harass him. In such cases it becomes very important for the high courts to quash such complaints as it leads to the abuse of the process of the lower courts. Thus section 482 is very important for acquiring proper justice and to stop the public from filing fictitious complaints just to fulfil their personal grudges.

The functions of the judiciary and the police are complementary, and each one is to exercise its own functions. No doubt, the code of criminal procedure, gives to the police unfettered power to investigate all the cases, where they suspect a cognizable offence has been committed. Even the high court does not interfere with such investigation, because it would be impeding investigation and the jurisdiction of the statutory authorities to exercise power in accordance with the provisions of criminal procedure code.

However, in appropriate cases, aggrieved person can always seek a remedy by invoking the power of the high court under Article 226 of the constitution to issue the writ of mandamus, restraining the police officer from misusing his legal powers. Further, in Hazari Lal Gupta V. Rameshwar Prasad, the apex

court laid down, that the high court can quash proceedings, if there is no legal evidence or if there is any impediment in the investigation or continuance of proceedings.

The policy of non-interference in the investigation was well explained by the Privy Council in King Emperor V. Khawaja Nazir Ahmad in the following terminology: " just as it is essential that everyone accused of crime, should have free access to the court of justice, so that he may be duly acquitted, if found not guilty of the offence of which he is charged, so it is of utmost importance that the judiciary should not interfere with the police matter which are within their province and into which law imposes on them the duty of inquiry..... "

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