



## **Spectrum of 'Inherent Powers of High Court' under Cr.P.C.**

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### **Abstract**

Article 227 of our Indian Constitution provides that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The criminal procedure code further provides that every High Court shall so exercise superintendence over subordinate courts so as to ensure proper disposal of cases by such courts. The 'Code' has entrusted every High Court with several powers and duties for providing fair justice in the society.

The Allahabad High Court, in one of its Judgment's while dealing with the section 482, has observed that '*The section is a sort of reminder to the High Courts that they are not merely courts in law, but also courts of justice and possess inherent powers to remove injustice*'. Let us discuss this concept to understand Section 482.

**Keywords:** inherent power, High Court, justice, basic rights, bail, FIR

### **A. Interpretation of Section 482**

Section 482 of 'The Code', is a declaratory provision about 'inherent powers of High Court', hence the rights are not conferred by this section on High Court, it suggests that the inherent powers exist *per se* in High Court.

Sections 482 begins with "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make.....". The use of term 'Nothing' implies that it is a SAVING CLAUSE. According to Merriam Webster the meaning of *saving clause* means: a clause in a statute exempting something from the statute's operation or providing that the rest of it will stand if part is held invalid. In simple terms it means, the approach of High Court should first examine whether the prevailing situation is covered by any provisions of 'The Code'— whether expressly or impliedly – if not, then inherent powers of High Court will apply.

The Constitution of India provides fair balance between – *powers of legislature* through express provisions of 'The Code' and inherent powers is a manifestation of *judicial wisdom*. There cannot be a conflict between the two. The use of term 'nothing' denotes that the High Court should first examine whether the given situation is covered by any provision of 'The Code'— expressly or impliedly, if not, then only inherent power shall be exercised by High Court. Hence, the inherent power to be exercised sparingly and only in exceptional cases and not matter of routine.

Since, High Courts are the highest judicial authority in any state and they are vested with inherent power to balance the personal rights and societal interests to achieve JUSTICE.

High Court, being empowered with inherent power has three purposes:

- 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.<sup>2</sup>

### B. Why inherent power vested with High Court?

When an offence is committed against a person, it's not just a wrong against a person rather its crime against a society. It has direct impact on life and personal liberty of individuals and also the larger society interest. Hence, it was prudent vest such powers only with the superior courts and much experienced judicial mind. This also corroborates (affirm) with sec.483 which declares that High Court has power to have a continuous superintendence upon the subordinate judicial magistrate.<sup>3</sup>

In *Madhu Limaye v. Maharashtra*<sup>4</sup>, the Court has observed the following principles that would govern the High Court's inherent jurisdiction:

1. That inherent power must not be resorted to, if specific provision for redressal of grievances is given.
2. That it should be carefully used to prevent abuse of process of any Court or otherwise to secure ends of justice.
3. That it should not be exercised against the express provision given in any other statute.

The inherent power would come into play there being no other provision in the code for the grievance redressal of the aggrieved party.

### C. Does Judicial Magistrate have inherent powers like High Court have?

According to the judgement passed in *Sakiri Vasu* case<sup>5</sup>, the Supreme Court applied 'doctrine of implied powers'. It asserted that an implied power inferred under section 156(3) to Magistrate regarding monitoring of investigation – Magistrate has sole authority to monitor investigation and if investigation not going properly then Magistrate, *suo moto*, can interfere in the investigation.<sup>6</sup>

Whereas in *Dharmesh Bhai Vasudev Bhai* case<sup>7</sup>, the issue raised that whether Magistrate have the power to recall his order once issued under Section 156(3). It was held by the Apex Court that, once order passed under section 156(3), an investigation must be carried out. "Interference in the exercise of the statutory power of investigation by the police by the Magistrate far less direction for withdrawal of any investigation which is sought to be carried out is not envisaged under the Code of Criminal Procedure. The Magistrate's power in this regard is limited. Even otherwise, he does not have any inherent power. Ordinarily, he has no power to recall his order."<sup>8</sup>

Hence, Magistrates have limited and implied inherent powers only if conferred by 'The Code'.

<sup>2</sup> Code of Criminal Procedure 1973, s 482.

<sup>3</sup> Code of Criminal Procedure 1973, s 483.

<sup>4</sup> 1978 AIR 47

<sup>5</sup> *Sakiri Vasu v. State of UP*, (2008) 2 SCC 409 (n 2).

<sup>6</sup> Dr Raj Yadav, 'Quashing and Cancellation of FIR in India: A Study of Legislative and Judicial Trends' (Social Science Research Network 2012) SSRN Scholarly Paper.

<sup>7</sup> *Dharmeshbhai Vasudev bhai v State of Gujarat* (2009) 576 SCC.

<sup>8</sup> *id.*

## D. Section 482 Cr.P.C. v/s Section 151 of C.P.C

Section 482 of Cr.P.C. is of singular and seminal significance. The statutory provision which immediately comes to mind is Section 151 C.P.C because to a great extent the language is identical. The provision is found in Section 151 of the Code of Civil Procedure which saves the inherent power of the Civil Court. The said provision also states that the inherent power of the Court to pass any order as may be necessary shall not be either deemed to be limited or affected by any of the provisions of the Civil Procedure Code for passing order for the following purposes:

- i) to make an order as may be necessary for the ends of justice ; or
- ii) to prevent abuse of the process of the Court.

The principle is well established that when the Code of Civil Procedure is silent regarding a procedural aspect, the inherent power of the court can come to its aid to act *ex debito justitiae* for doing real and substantial justice between the parties. This Court had occasion to observe in the case of *Monohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*<sup>9</sup>, as follows:-

"It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them."<sup>10</sup>

Thus law has been well settled in respect of the scope of Section 151 C.P.C. As we have extracted above, the inherent power of the Court under Section 151 C.P.C. is inherent in the Court and not conferred upon the Court by the Code. The said power can be exercised by the Court in order to secure the ends of justice provided there is no specific provision elsewhere in the code governing the field.

*Firstly*, it is at once obvious that whereas Section 482 CrPC is available only to the High Courts, Section 151 can be resorted to at any stage of civil judicial proceedings in any of the hierarchical tiers.<sup>11</sup>

*Secondly*, the use of the word "otherwise" in Section 482 has the avowed effect of boundlessly broadening the boundaries of inherent powers of the High Court in exercise of its criminal jurisdiction.

*Thirdly*, Section 482 can be employed to ensure obedience of any order passed by the Court because of the phrase "to give effect to any order under this Code".<sup>12</sup>

It needs to be mentioned that Section 482 Cr.P.C. and Section 151 C.P.C. are almost in *pari materia*<sup>13</sup>. The Hon'ble Supreme Court while interpreting both Section 151 C.P.C. and Section 482 Cr.P.C. has taken the consistent view that the inherent power of the Court is not conferred upon either by the Code of Criminal Procedure or Code of Civil Procedure but it is inherent in the Court by virtue of its duty to do justice between the parties before it. In both the Codes, if there is no specific provision for passing an order to secure the ends of justice, the Court can exercise its inherent power to pass such an order.

## E. Scope of inherent powers of High Court

Inherent powers include – powers to quash FIR, investigation or any criminal proceedings pending before High Court or subordinate courts to achieve justice. These powers are utilised only when no other provisions are not available. It is not a matter that High Court may interfere anytime in the criminal proceedings executed by the subordinate courts. High Court will only interfere when there will be miscarriage of justice or if there is extraordinary circumstance.

In the leading case of *Bhajan Lal*<sup>14</sup>, where the Supreme Court has provided some guidelines to define the legal position to be followed by High Court while exercising the inherent powers may quash the criminal complaint or FIR.

<sup>9</sup> AIR 1962 SC 527

<sup>10</sup> Lal Kamlendra Pratap Singh v State of UP and Ors (2009) 437 SCC.

<sup>11</sup> Brihaspati Sah & Ors vs The State Of Bihar (2018) 1994 SCC OnLine Pat (Patna High Court).

<sup>12</sup> *Id.*

<sup>13</sup> The doctrine of 'Pari Materia' is a useful tool for the interpretation of statutes that work towards the same objective. The doctrine helps in harmonizing the aim and subject of the legislation.

<sup>14</sup> State of Haryana v. Bhajan Lal (1992 SCC 335).

### a. Bail and Section 482

Article 21 of our Constitution provides, "No person shall be deprived of his life or personal liberty except according to a procedure established by law". The concept of bail has a direct nexus to Article 21 of the Constitution. Hon'ble Supreme Court<sup>1</sup> has recognized that bail acts a safeguard to the right of personal liberty enshrined under Article 21 of the Constitution.

Let us understand what does bail means, since no definition of the term "bail" is provided under the Code of Criminal Procedure, 1973. However, through judicial interpretation we can get the idea of the term "bail". Bail connotes the process of procuring the release of an accused charged with certain offence by ensuring his future attendance in the Court for trial and compelling him to remain within the jurisdiction of the Court.

Chapter XXXIII, Sections 436 till 450 Cr.P.C., deals with the provisions relating to bail and bonds. Crucial amongst them are, the provisions of Section 437 and 439 Cr.P.C., which provide for grant of regular bail by Magistrate and by Sessions and High Court, respectively and Section 438 Cr.P.C., which deals with the provisions relating to the grant of anticipatory bail by the Courts of Sessions and High Court.

Generally, courts in India works on the principle of '*grant of bail is a rule and jail is an exception*'. The pretext behind the same being that if an accused person will be in a better position to look after his case and would be able to defend himself when he is outside jail and not in custody. On equal footing, courts has the power to grant interim bail, till final adjudication on anticipatory or regular bail. According to the Hon'ble Supreme Court, interim bail acts as a means to safeguard the reputation of an accused. The Hon'ble Apex Court has further recognized that "*in the power to grant bail there is inherent power in the court concerned to grant interim bail to a person pending final disposal of the bail application.*"<sup>15</sup>

Courts in India have consistently recognized that interim bail acts a means to protect a person's reputation till the adjudication on the main application of bail, susceptible to be dented by the mere event of arrest of such person and stigma associated therewith. In this regard, the Hon'ble Supreme Court, discussing the scope of interim bail, in *Lal Kamlendra Pratap Singh v. State of U.P. and Ors.*<sup>16</sup>, has held, "*In appropriate cases interim bail should be granted pending disposal of the final bail application, since arrest and detention of a person can cause irreparable loss to a person's reputation....*"<sup>17</sup>

One such instance of misuse of interim bail was recognized by the Hon'ble Supreme Court in *Rukmani Mahato v. State of Jharkhand*,<sup>18</sup>. In the said case, the Hon'ble Apex Court deprecated the practice of the subordinate Courts, granting regular bail on the strength of the interim/pre-arrest bail granted by the superior court. The Hon'ble Court held, "*..even if the superior court is to dismiss the plea of anticipatory bail upon fuller consideration of the matter, the regular bail granted by the subordinate court would continue to hold the field, rendering the ultimate rejection of the pre-arrest bail by the superior court meaningless.*"<sup>19</sup>

The Supreme Court recently held that the inherent power under Section 482 Cr.P.C. cannot be used by the High Court to reopen or alter an order, after disposing a petition decided on merits.

Section 438 of Cr.P.C. is not the sole repository of the power to grant anticipatory bail. The High Courts are endowed with inherent powers to make such orders as to secure the ends of justice.

### b. Quashing F.I.R, criminal proceedings and Section 482

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 of Criminal Procedure, 1973. The Power to quash Under Section 482 is attracted even if the offence is non-compoundable.

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.

<sup>15</sup> Sukhwant Singh & Ors v. State of Punjab, (2009) 7 SCC 559

<sup>16</sup> (2009) 4 SCC 437

<sup>17</sup> *Id.*

<sup>18</sup> (2017) 15 SCC 574

<sup>19</sup> *Id.*

In the case of *Parbatbhai Aahir & Ors. Vs. State of Gujarat & Anr.*<sup>20</sup>, the Supreme Court has laid down broad principles from various precedents in relation to Section 482 of the Code for quashing of First Information Reports (FIRs). It follows:

In *R.P. Kapoor v. State of Punjab*<sup>21</sup>, the Supreme Court observed the circumstances where High Court may quash the criminal proceedings in a subordinate criminal court:

- If offence committed by an accused manifestly appears that there is a *legal bar against continuation or institution* of the said proceedings.
- If allegations made against the accused person do constitute an offence alleged but there is a *no legal evidence or evidence is clearly inconsistent with accusation made*.
- Where the allegations made in *FIR or complaint*, do not constitute the offence alleged, in such cases *no question of appreciating evidence arises*.

Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under section 482 in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point.

#### F. Conclusion

The object and purpose of Section 482 Cr.P.C. has been enunciated by the Supreme Court in *Dinish Dutt Joshi's*<sup>22</sup> case as follows:

"The principle embodied in the section is based upon the maxim *quando lex aliquid alicui concedet, concedera videtur et if sine qua res ipsae esse non potest*. This maxim means that when the law gives to anyone, it gives all those things without which the thing itself would be available."<sup>23</sup>

The jurisdiction of the Supreme Court under Article 142 of the Constitution of India, depends on the facts and circumstances of each case.<sup>24</sup> The High Court in exercise of its powers under Section 482 Cr.P.C. and the Supreme Court under Article 142 of the Constitution of India would not direct quashing of a case involving a crime against the society particularly when both the learned special judges as also the High Court have found that a *prima facie* case has been made out against the appellants herein for framing a charge.<sup>25</sup>

Hence, section 482 does not confer new powers. It only recognises and preserves powers which inhere in the High Court. The invocation of the jurisdiction of the High Court to quash a First Information Report is not the same as the invocation of jurisdiction for the purpose of compounding an offence under section 320. 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. 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.

<sup>20</sup> (2017) 9 SCC 641

<sup>21</sup> R.P. Kapoor v State of Punjab (1960) SC 866 AIR.

<sup>22</sup> *Dinish Dutt Joshi v. State of Rajasthan* (2001) 8 SCC.

<sup>23</sup> *Ravi Shankar Srivastava* (2006) 188 SCC.

<sup>24</sup> *Minu Kumari v State of Bihar* (2006) 310 SCC.

<sup>25</sup> *Smt. Rumi Dhar v. State of West Bengal*: (2009) 6