

INHERENT POWER OF THE HIGH COURT

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INTRODUCTION

The inherent power of the high court allows it to pass any order as it deems fit and reasonable so as to ensure justice to the parties. This is a very essential power to the high court and is its character attribute. This power was provided to the high court because high courts were not able to provide complete justice to the parties even when the case has apparent illegality. The inherent power of the High Court is inalienable and inseparable powers of the high court which are necessarily judicial in nature and for securing the ends of justice. Each High Court has the power to make rules under which these inherent powers may be invoked, which is conferred to them by the Constitution of India. The Inherent Power of the High Court is of that great importance that it was given to the High Court in both Criminal and Civil matters by the Code of Criminal Procedure and Code of Civil Procedure respectively. This power cannot be taken away from the High Court and this power helps the court to fulfill its main duty of delivering justice. These powers of the High Court can be invoked for securing the ends of justice, where there is no other remedy provided by law. An offence is a crime not only against an individual but against the society as a whole i.e., not only the victim gets affected by it but the whole society gets affected. As it has a direct impact on society, it was felt to the lawmakers to provide a provision to provide for such inherent power to the judicial minds. Such power must be used very carefully in cases to secure the ends of justice or to prevent the abuse of the process of law such can also be inferred from the fact that the Inherent Power is given to the High Court only and not to the subordinate courts. The Magistrate's power in this regard is very limited¹.

LEGAL PROVISION UNDER CODE OF CRIMINAL PROCEDURE, 1973 (HEREINAFTER CRPC) –

Section 482 of CRPC provides that, no provision of CRPC shall be affecting the inherent power of the high court so as to make any decision as it deems necessary for providing justice. This is the power that is vested in the high court due to its very existence. S.482 is trying to cut back the ambiguity that whether these can be curtailed by other provisions of CRPC or not. This

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¹ Dharmeshbhai Vasudevhai v. State of Gujarat (2009) 576 SCC

section does not confer any new right or power but is recognizing the power which the court already possesses and is just a declaratory provision. This enables the high court to do justice. This section prohibits all such things which may curtail the inherent power of the high court. The inherent power of the high court can be used only in matters where there is no other provision provided under the code or where the high court feels that justice cannot be served if this section is not used. Inherent power can be used by the court to quash any proceedings in a case which is proper so as to either prevent the abuse of the process of the court or otherwise to secure the ends of justice, for instance, on the basis of complaint proceedings has been initiated and the allegations in the complaint did not make out the alleged offences, in this case, the high court's inherent power to quash such proceedings can be invoked. CRPC provides the provisions where the high court can exercise this power²:

- o To give effect to an order under the code; or
- o To prevent abuse of the process of the court; or
- o To secure the ends of justice.

This section on the first instance saves the high court with inherent power but by providing these specific provisions, this section also limits its powers for the cases in which it can be exercised. But what we understand from this provision is that while drafting this provision the legislature has tried to cover almost all the possible scenarios/aspects that may arise at any point of time for which no provisions were made because it is near to impossible to look for every possible circumstance which may arise. This power cannot be used by the high court in cases where the point of issue is yet to be decided by the trial / lower court³. This power should be exercised cautiously and with proper and necessary care as the basis of this power is to provide justice and not to thwart it. The high court should use it *ex debito justitiae* (of or by reason of an obligation of justice) and must not assume the powers of the trial court⁴ with itself. Following are the principles laid down by the Supreme Court which are required to be observed by the court while exercising its Inherent Power provided in CRPC⁵ :

² Section 482 CRPC

³ State of Madhya Pradesh v. Yogendra Singh &Anr. Criminal Appeal No. 175/2020

⁴ State of Maharashtra v. Arun Gulab Gawali, AIR 2010 SC 3762

⁵ Madhu Limaye v. The State of Maharashtra, AIR 1978 SCR (1) 749

o Power is to be used only if there is no specific provision provided in the CRPC to redress the grievances of the aggrieved party

o It should be exercised only to prevent the abuse of the process of court or to secure the ends of the justice

o It should be exercised against the express bar of law engrafted in any provision of CRPC

Supreme Court observed that there may be some cases in which the proceedings are required to be quashed so as to prevent the abuse of the process of the court by institution or continuation of criminal proceedings against the accused. In such cases, if there is a legal bar against such proceedings then the high court would be well within its limits while quashing the proceedings against the accused on this ground⁶. In cases where there is no prima facie case or no cognizable offence is disclosed or non-cognizable offences committed can be investigated by the order of the Magistrate or in cases where the case is filed with ill intention then the high court can use its inherent power to quash such proceedings so as to save the accused from the unnecessary procedure that he was following⁷. High Court has the discretion to decide whether they want to hear the case under this section or not. Even the powers of the revision cannot affect the inherent powers. If the petitioner has not come to court with clean hands, then he shall not be allowed to utilize the provisions of this section⁸.

In the case of *State of Haryana v. Bhajan Lal*⁹, Supreme Court had laid down guidelines that cannot be prescribed precisely but must be kept in mind while exercising such power by the High Court:

- Where prima facie the allegations in FIR on the face of it do not constitute the offence
- Where the allegations in FIR do not disclose the cognizable offence on the face of it, which would not justify the investigation by the Police Officers U/s 156(1) CRPC.
- Where allegations of FIR on the basis of which evidence are collected do not make out the case against the accused and do not disclose the commission of the offence.

⁶ R.P. Kapur v. State of Punjab AIR 1960 SC 866

⁷ State of Haryana And Ors v. Bhajan Lal And Ors 1992 Supp (3) SCC 335

⁸ Homida Khatoon v. State of Jharkhand 2004 Cri LJ 3626

⁹ 1992 Supp (3) SCC 335

- Where the content of FIR discloses only the commission of the non-cognizable offence and the Police Officer permits the investigation only with the order of the Magistrate as is stated U/s 155(2) of CRPC.
- When no just conclusion can be reached for proceeding against the accused as there is no probable inference can be obtained from the information provided in the FIR
- Where there is a bar expressly provided under the provisions of CRPC or under a particular Act under which the proceedings were instituted and continued under which criminal proceedings are instituted, providing redressal to the grievance of the aggrieved party effectively.
- Where the proceedings have been initiated deliberately and maliciously with a view to take revenge on the accused in order to satisfy the personal grudge against the accused.

Keeping in mind the practical aspect, the high court can use its inherent power to quash a case that is not yet to put to an end even when the parties have done a compromise between them¹⁰. Supreme Court in the case of Narayan Malhari Thorat v. Vinayak Deorao Bhagat (2018)¹¹ decides that the high court cannot use its inherent power before the completion of the investigation because only after the investigation men's rea of the person can be determined. This section is not arbitrary and cannot be used to cut short the proceedings of the court¹². In exceptional circumstances, the high court can remove remarks made by a lower court by itself in order to secure justice¹³. High Courts do not generally interfere with the proceedings initiated by its subordinate courts, they will interfere only when there are exceptional circumstances i.e., miscarriage of justice.

CONCLUSION

It is a very useful provision as it helps the court to provide justice in those cases as well which even the legislature was not able to postulate. This power cannot be exercised in respect of the matters which are dealt with by any of the provisions of the CRPC. S. 482 will come into operation only when the particular matter in question is not dealt with anywhere in CRPC subject to the further requirement that while settling such matter by exercising this power must

¹⁰ Kishan Kant Sharma v. State of Madhya Pradesh, Writ Petition No. 8441/2016

¹¹ SLP (Crl.) No. 7933/2018

¹² State of Bihar And Anr. v. K.J.D. Singh 1993 (95) BOMLR 238

¹³ R.V. Kelkar's Criminal Procedure p.906

fulfill either the purposes mentioned in S. 482 or which were laid down by the courts of the country in their judgement from time to time. In my opinion, there is a need to change in the jurisdiction of these provisions. The Inherent Power under CRPC is provided only to the High Court but this power may also be provided to the Subordinate Courts as well. This is a very important power for the exercise of which one has to go to the High Court. The Magistrate has no power to review its decision. Criminal Proceedings create more effects on society and on individuals which need to be dealt with more carefully and expeditiously. If one has to go to High Court every time or for every order, it will take a lot of time and the interest of the parties will be affected negatively. The Magistrate will be of no help even in the cases where he can see that the proceedings are done and there is an abuse of the process of law on the face of it and there is some apparent illegality. It also increases the workload of the High Court when all such matters are to be dealt with by the High Court. It is very strange to see that the matters which can be dealt in the original proceedings by the subordinate courts are taken to the High Court which makes them overburdened and the cases remain pending, therefore, the process which could have been expedient is now taking a long process and time to dispose of. Due to the above-said reasons, the subordinate courts may also be provided with the Inherent Power as it is provided in the Code of Civil Procedure to curtail the abuse of the process of law. Both codes provide this provision to protect the courts from their respective provisions (CPC & CRPC). The purpose of inherent power in civil law is the same as the purpose of inherent power in criminal law, therefore, there is no convincing reason for not providing an inherent reason to the subordinate criminal courts and it is provided only to the civil courts only. This is high time now we adopt this change because the law has to be changed with time according to the needs of the hour.