



**THE POWERS UNDER SECTION 482
ARE FREQUENTLY USED TO
THWART THE STATUTORY SCHEME
AND PURPOSE OF THE CODE OF
CRIMINAL PROCEDURE. CAN
THESE POWERS BE CURTAILED,
AND IF SO, SHOULD THEY BE?**

By Aditya Banerjee
From Jindal Global Law School, O.P Jindal
Global University

ABSTRACT

The Predominant role of Criminal Law in our society cannot be undermined in the wake of the crucial role which the field of law is empowered with. Procedural Law has a significant role, in light of the adversarial system of justice. Section 482, which provides for Inherent Powers of High Courts is an essential component of Criminal Procedure Code, 1973. The ambit of the said section is very wide, in proportion to the nature of powers contained therein.

This paper seeks to analyse the trend of judicial decisions pertaining to the scope and use of Section 482. Although, there are instances whereby the powers under section 482 are used to thwart the greater object and purpose of the Code, but in most of such cases, the fallacious applications/interpretation of Section 482 by the High Courts are reconciliated by the Hon'ble Apex Court. Further, the paper delves into the scope of curtailment of

Powers under section 482 and explores such possibility.

Criminal Law occupies a predominant place in the society, acting as a weapon to protect the society from anti-social behaviour. The two aspects of Criminal law are: Substantive Law and Procedural Law. Criminal procedure is an inseparable part of the penal/Criminal Law and the effectiveness of the Substantive law depends upon the efficacy of the procedural law.¹

The code was enacted with a view to providing mechanism and a proper system and procedure of criminal trial, the greater object of the Act being providing for a systematic way of various aspects of criminal trial. The law of Criminal Procedure also aims at providing safeguard against possible harms and violation of human rights of innocent persons in its process of shifting criminals from non-criminals.² An essential and rather unique part of the Code is the Inherent powers of the High Court under section 482, which is an age-old principle based on the maxim/principle *ex debito justitiae*. The rule of inherent powers has its source in the maxim *Quod lex aliquid aliqui concedit, concedere videtur id sine quo ipsa, esse non potest* which means that when the law gives anything to anyone, it also gives all those things without which the thing itself could not exist.³ The purpose of inherent powers in Civil and Criminal jurisdiction is to prevent degeneration of the proceedings into a weapon of harassment or persecution.

¹ RV KELKAR, LECTURES ON CRIMINAL PROCEDURE VII (EBC ed. 2006).

² RV KELKAR, LECTURES ON CRIMINAL PROCEDURE I (EBC ed. 2006).

³ BN BANERJEE, LAW OF CRIMINAL APPEALS REVISIONS, REFERENCE AND REVIEW 969 (Lexis Nexis Butterworths ed. 2003).



The section was drafted/inserted owing to the inability of the High Courts to render justice in cases of apparent illegality due to the absence of any express provisions. Although the wideness of the section makes possible the misuse and abuse of the purpose behind the section, do not permit it to be reduced into a straightjacket formula, but the Judicial limitations upon interpretation and application of the said section correct the error committed along with reconciling the application with the objective behind the Section and Code.

In *Madhu Limaye v State of Maharashtra*⁴, the following principles were laid down in relation to the exercise of inherent powers of the High Court:

- 1) That the power is not to be resorted 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 the 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 *Ram Narain v Mool Chand*⁵, the fulfilment of the following conditions was held to be necessary in order for Courts to seek interference under section 482:

- 1) The injustice which comes to light should be of a grave, and not of a trivial character

- 2) It should be palpable and clear and not doubtful
- 3) There exists no other provision of law by which the party aggrieved could have sought relief.

In most of the cases provisions of Section 482 are invoked for purpose of quashing of complaints or investigation or FIR or issue of process or order of cognizance by the Magistrate or any proceedings. While dealing with such petitions, the Court's duty is to look into, very carefully the aspect as to whether the facts and all other documents taken at their face value constitute a prima facie case or not. It has often been reiterated that FIR can only be quashed in 'rarest of rare cases', but justice would have its own way if FIR is bad enough to not disclose the commission of a cognizable offence.⁶ It has been consistently held that the power under Section 482 must be exercised sparingly, with circumspection and in rarest of rare cases.⁷ Along with conferring provision of such wide powers, frequently arises the concern of possibility and examples (in cases) of Section 482 being misused by the Courts to deny justice to the prosecution/complainant and thwarting the prosecution from seeking justice in accordance with the aims and objects of the Code and the mentioned section.

There are cases whereby the Defendant is actually accused and guilty of commission of the offence and in defending such cases, there are often efforts/attempts by the defendants

⁴ *Madhu Limaye v State of Maharashtra*, (1977) 4 SCC 551 [8].

⁵ *Ram Narain v Mool Chand*, 1959 SCC OnLine All 205 [40].

⁶ K. ARUNACHALAM, *INHERENT POWERS OF HIGH COURTS 2* (Banerjee Publications ed. 2006).

⁷ *Som Mittal v Govt of Karnataka*, (2008) 3 SCC 574 [2].



to thwart the prosecution from achieving justice in true sense. Section 482 of the Code is often resorted to in such attempts, the reason being the nature of the code. Also, more often than not High Courts tend to use the section whilst lacking the realization that the Section is to be used with ultimate caution and sensitivity, given the wide amplitude and of the section.

A recent example is the case of *Rajeev Kourav v Baisahab and Ors.*⁸ The Facts in a nutshell are: The allegations levelled by the Complainant-Appellant against the Respondents (Appellant's relatives) is that they subjected his wife to harassment due to which she committed suicide along with her children. Post the investigation, the respondents filed a petition u/s 482 Cr.P.C for quashing the proceedings. The high Court accepted the contention of the petitioners as to that no direct evidence and link to hold them guilty of Section 306 I.P.C (Abetment to Suicide) and held that nothing on record established such a link and quashed the criminal proceedings. For these purposes, the Court also looked and relied upon the statements recorded under section 161 Cr.P.C. On appeal, the Supreme Court set-aside the judgment of the High Court. The Supreme Court observed that the High Court erred in quashing the proceedings by assessing the statements under section 161 Cr.P.C. Also, the court reiterated the settled position of law that statements u/s 161 Cr.P.C is admissible and not to be considered while adjudicating petition u/s 482 Cr.P.C. The accepted principle is whether a prima facie case is being made out by taking the case at its face value and the ingredients of the offence alleged are being disclosed against

the accused or not. This case was an example whereby the High Court erred in using its power u/s 482 sparingly, failed in looking at it from the lens of Section 482 and in compliance of the precedents regarding guidelines upon the Inherent Jurisdiction.

The case of *Mushtaq Ahmad v Mohd. Habibur Rehman Faizi & Ors*⁹ is an epitome whereby the High Court failed in proper application of the interpretation regarding the powers u/s 482 and overstepped its boundaries while adjudication of such petition. The facts in a nutshell are: the appellant-complainant was a teacher at a Madrasa and the respondents were the Manager, Principal, teacher and managing committee member of the school. During 1985-1988, while the appellant went on leave, he found out that his salaries and dearness allowances during the aforementioned period were being withdrawn by the respondents from Government funds by means of forgery. He found a complaint against the respondents. The respondents filed complaint u/s 482, which was allowed (with a finding that the complaint was false). On appeal, the Supreme Court reversed the HC order. Further, the Court also mentioned that "In spite of the fact that the complaint and the documents annexed thereto clearly made out a, prima facie, case for cheating, breach of trust and forgery, the High Court proceeded to consider the version of the respondents given out in their petition filed under section 482 Cr.P.C. vis-a-vis that of the appellant and entered into the debatable area of deciding which of the version was true, - a course wholly impermissible in view of the above quoted observations in the case of Bhajan

⁸ *Rajeev Kourav v Baisahab and Ors*, 2020 SCC OnLine SC 168.

⁹ *Mushtaq Ahmad v Mohd Habibur Rehman Faizi & Ors*, 1996 SCC (7) 440 [4].



Lal.” Although the High Court referred to the judgment of *Bhajan Lal* case and the guidelines regarding quashing of FIR therein, but it failed to adhere to the note of caution of the same case – “that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

The aforementioned cases are lucid illustrations and realities of the plausible apprehensions of misuse of Section 482 and defeating the object of the section and the statutory purpose. Similar to the aforementioned cases, there are numerous cases wherein the High Courts have used Section 482 incorrectly and have overstepped their jurisdictional bound while application of the said section. Although the functioning of the Indian Judicial system is adversarial, but error in application and incautious, over application of Section 482 does thwart the prosecution/complainant from succeeding i.e. seeking Justice. By depriving the complainant from seeking justice, the whole system and object of Criminal justice system is itself liable to be put up on trial and there arises the need re-scrutinizing the object and purpose of the Section, the Code and the greater purpose of Criminal Trials.

The aforementioned cases and such gross errors/injustices make it mandatory to visit the question pertaining to the scope of curtailment of powers under Section 482. Although the Inherent Power of the High Courts have been recognized by Section 482 of Cr.P.C. 1973, but such power has been

existing even prior to the enactment of the 1973 Code. The corresponding law was incorporated in the 1898 Code as Section 561A. This implies that the powers given u/s 482 cannot be said to be legislative/statutory in nature, but as innate powers existed with Courts since ancient time, for the sole purpose of ensuring dispensation of justice in the absence of any specific provision for dispensing justice/prevent injustice. Also, no statutory limitations are placed upon the section, but only judicial precedents lay down directions and guidelines regarding the application/interpretation of Section 482. Ends of justice are higher than the ends of mere law though justice has to be administered according to laws made by the legislature. Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Sec. 482 ought not to be encased within the straightjacket of a rigid formula.¹⁰ Therefore, in consideration of the nature (Inherently Judicial Nature) of power provided by Sec 482, curtailment of powers u/s 482 by Statutory means may not be a feasible/legal option.

Another facet of looking into the debate surrounding Section 482 Cr.P.C. would be to look at it from a positive angle. To err is human and it is one of the many basic qualities of humans and judges cannot be sequestered from the class of humans. There are errors in application and usage of Section 482 by the High Court in disguise/in the wake of delivering justice to the petitioners. But this is where the purpose behind the hierarchy of court comes into play and the Apex Court acts as the watchdog and the supreme

¹⁰ 2 BB MITRA, CODE OF CRIMINAL PROCEDURE 1664 (Kamal Law House ed. 2002).



interpreter and corrects the error (if any) made by the lower courts and ensures that dispensation of justice takes place in a fair and proper manner. Also, in cases involving the question of correct application of Section 482 by the High Court, Hon'ble Supreme Court along with judging on the issue has in cases deemed fit issues guidelines and limitations regarding the scope and powers u/s 482, which act as Stare Decisis for future such cases. Such cases do give the Supreme Court an opportunity of interpretation, resulting in cementing/strengthening the jurisprudence surrounding Inherent Jurisdiction of the High Courts. Therefore, such (faulty) adjudications by High Courts can be said to be blessing in disguise.

A classic example of such is the case of *State of Haryana v Bhajan Lal*¹¹. A complaint regarding disproportionate assets was filed against Bhajan Lal (ex-CM of Haryana) under the IPC and PC Act. Later on, FIR was registered and investigation started. He filed a Writ petition regarding quashing the FIR and stopping the investigating. The High Court held in his favour. On appeal, the Supreme Court set aside the High Court's order of quashing the FIR and directed fresh investigation because the investigation was not done in accordance with the provisions of Prevention of Corruption Act. Amongst the many sections of the Code expounded by the Court, the Supreme Court laid down 7 points wherein the power u/s 482 and 226 could be used by the High Courts to quash the proceedings/FIR, which have been extensively used in future cases.

The aforementioned points though not exhaustive, but concretely do lay a groundwork regarding criteria/conditions to be fulfilled for application of Section 482 from a futuristic point of view. This case has been used as a concrete precedent in future such cases. There have been several such cases whereby The Supreme Court has been observing various aspects, putting various limitations and laying guidelines aimed towards reducing the wideness into partial exhaustiveness (so as to prevent it from being thwarted) of use of Section 482, including that the test is to be done without looking into the documents and not embarking upon an enquiry as to the reliability or genuineness in the allegations made in FIR¹², when the Court is able to discover some finding of a fact in regard to commission of an offence, inherent powers cannot be used to interfere in the said findings.¹³

Section 482 (and similar provisions pertaining to Inherent Jurisdiction) provides a recourse in bridging gaps in instances where arises legislative lacunae. It is not possible to pre-empt every such case that may arise within a particular topic/section, also due to lack of pre-emption there may be cases which aren't covered within the ambit of any particular Section. It is to overcome the Lacunae in Procedural Law and to deal with cases where such lacunae is discovered that Procedural Law invariably recognises the existence of inherent power in courts.¹⁴ An example of such is: Although express provision is made in ss 436 and 437(5) for the cancellation of bail bonds where the accused is released on bail during the course of trial,

¹¹ *State of Haryana v Bhajan Lal*, 1992 Supp (1) SCC 335.

¹² *Dr. Subramaniam Swamy v Pushparaj*, 1998-1-CTC 300.

¹³ *Samidurai v Rajalakshmi*, 1999 SCC OnLine Mad 37 [14].

¹⁴ 2 BB MITRA, CODE OF CRIMINAL PROCEDURE 1663 (Kamal Law House ed. 2002).



no such express provision has been made for the cancellation of bail or suspension of sentence in the case of a person convicted under s 389. This is a lacuna in the code: however, the omission is due to oversight or inadvertence and not deliberated. The High Court will have, in a proper case, power to take recourse to inherent jurisdiction and cancel the bail so granted.¹⁵ The bail may be cancelled by the high court in the exercise of its inherent jurisdiction even in the case of bailable offences.¹⁶ However this power cannot be invoked: a.) In respect of any matter covered by the specific provisions of the code, and b.) If its exercise would be inconsistent with any of the specific provisions of the Code.¹⁷

From the aforementioned discussion, it can be deduced that Section 482 poses a possibility of and has been misused, used to thwart the statutory scheme and purpose of the code. But upon a proper evaluation, it can be observed that though there have been few such instances of thwarting the prosecution from securing justice caused by error in proper interpretation of the section, but whenever it has been the case, such has been rectified by the Hon'ble Supreme Court. Also, the Supreme Court, where it has deemed fit, formulated rules and guidelines by proper interpretation and application of the said section in light of the previous precedents and the greater object and purpose behind the Section and the Code, reducing the section into exhaustiveness in arenas/situations which have a possibility of thwarting the object of the section.

Taking cognizance of the wide powers of the section and the greater role and powers provided to the High Courts to prevent justice, it is not possible to confine section 482 into exhaustiveness nor is it possible to curtail these powers. Curtailing such powers would make the Court handicapped and unable towards fulfilling the greater duty that has been entrusted to the Courts of delivering justice (prevent injustice) as curtailment of such powers would result in disproportionate balance between the end sought to be achieved and the means to reach the end. Judges of High Court have been empowered and entrusted with application of Section 482 judiciously and sparingly, in consonance with the object behind it and the precedents guiding such application, to uphold rule of law. "When the court exercises its inherent power under Section 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the Court."¹⁸

¹⁵ Pamphaty v State of Mysore, 1966 Supp SCR 477 [7].

¹⁶ Ratilal Bhanji Mithani v Asst Collector of Customs, (1967) 3 SCR 926 [2].

¹⁷ BB MITRA, *supra* note 14.

¹⁸ State of UP v OP Sharma, (1996) 7 SCC 705 [11].