INHERRENT POWERS OF HIGH COURTS

Section 482 of the Code of Criminal Procedure gives power to the High Court to entertain applications which are not contemplated by the Code. Therefore, if the High Court feels that ends of justice require that an order should be made in an application, although the application is not contemplated by the Code, the High Court will entertain the application and make necessary order to secure the ends of justice. Other situations, in which the inherent powers of the High Court under Section 482 Cr.P.C. can be invoked, one being to secure the ends of justice, are to prevent the abuse of process of law or to give effect to any order under the Code. Therefore, the powers conferred under Section 482 of Code of Criminal Procedure are of wide amplitude and can be invoked in a variety of situations. However, inherent jurisdiction of the High Court cannot be invoked where the grievance of the aggrieved can be redressed under a specific provision of the Code. The circumstances in which the inherent powers of the High Courts have been invoked include for quashing of First Information Report and criminal proceedings in a trial, seeking directions to the Police for protection of life and liberty, seeking directions for fair and proper investigation, transfer of investigation from local police to CBI or other specialized agency, against an order of subordinate court where there is no remedy of appeal or revision. However, the list is not exhaustive and the High Court can exercise its inherent powers to mould the relief as per the facts of the case. The Supreme Court in **Amar Nath versus State of Haryana, 1977 (4) SCC 137 and Madhu Limaye versus State of Maharashtra, 1977 (4) SCC 551** has held that the following principles would govern the exercise of the inherent jurisdiction of the

High Court under Section 482 Cr.P.C. (1) the power is not to be resorted to if there is a specific provision in the Code for the redressal of the grievance of the aggrieved party; (2) it should be exercised sparingly to prevent abuse of the process of any court or otherwise to secure the ends of justice; (3) it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

Can a complainant approach the High Court under Section 482 Cr.P.C. for registration of FIR?

As per the scheme of Code of Criminal Procedure, under Section 154(1) Cr.P.C a police officer is duty-bound to register a First Information Report, in case a cognizable offence is made out from the allegations in the complaint. Cognizable offence has been defined in the code as an offence in which the police officer 'may arrest without a warrant'. Further, if the complaint discloses the commission of a cognizable offence, a police officer can investigate without a formal order of a Magistrate. In case, the allegations in the complaint do not disclose commission of cognizable offence, but disclose commission of non-cognizable offence, the police officer must refer the complainant to the concerned Magistrate to file a formal complaint u/s 156(3) read with 190 Cr.P.C. The police officer has no power to investigate a non-cognizable offence without an order from a Magistrate. Whether an offence is cognizable, or not, depends on the table given in First Schedule of the Code. Generally, offences punishable with imprisonment for three years and more have been classified as cognizable offences. In case, a police officer refuses to register a FIR in a cognizable case, the complainant can submit a complaint, in writing to the concerned Superintendent of Police. At the stage of registration of a

FIR, the police officer cannot embark upon an enquiry as to whether the information is reliable or not and refuse to register a case on the ground that the information is not credible. The level of satisfaction required for registration of a FIR is 'prima-facie'. Once a prima-facie case, disclosing commission of cognizable offence, is made out in the complaint, the police are duty bound to register a FIR. Only once the FIR has been registered, the police can commence investigation. In a recent Constitutional Bench judgment **Lalita Kumari versus State of Uttar Pradesh, 2014 (1) SCC (Cri) 524** the Supreme Court has held that in a case disclosing commission of cognizable offence registration of FIR is mandatory. However, certain exceptions have been carved out in which the police can carry out preliminary enquiry before registration of FIR, they are:-

(a) matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/ laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

Therefore, it is settled that in case the Police fail in their duty, to register a FIR in a cognizable case, the complainant can resort to invoking the inherent powers of the High Court under Section 482 Cr.P.C. Often the judgment in the case of **Sakiri Vasu versus State of U.P., 2008 (2) SCC 409**, is quoted against interference under Section 482 Cr.P.C. for registration of FIR because the judgment (supra) mandates that before approaching the High Court a complainant must approach the concerned Magistrate by way of a complaint under

Section 156 (3) Cr.P.C. However, in light of judgment in the case of Lalita Kumari, which is a Constitutional Bench judgment, in a cognizable case, the Police is duty bound, first and foremost, to register a FIR and then investigate. Therefore, interference under Article 226 of the Constitution read with Section 482 of the Code is justifiable.

Under what circumstances and in what categories of cases, criminal proceedings can be quashed in exercise of inherent powers of the High Court?

Over a period of time, judicial precedent has developed enumerating the circumstances in which the High can exercise its inherent powers to quash criminal proceedings, including FIR, charge sheet etc. In **R.P. Kapur versus The State of Punjab, AIR 1960 SC 866**, it has been held by the Supreme Court that "there may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the

complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A (present Section 482 of Cr.P.C.) the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A (present Section 482 of Cr.P.C.) in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re: Shripad G. Chandavarkar, AIR 1928 Bombay 184, ***Jagat Chandra Mozumdar v. Queen Empress, ILR 26 Calcutta 786***, ***Dr. Shankar Singh v. State of Punjab, 56 Pun LR 54***, ***Nripendra Bhusan Roy v. Gobina Bandhu Majumdar, AIR***

1924 Calcutta 1018 and ***Ramanathan Chettiyar v. Sivarama Subramania, ILR 47 Madras 722.***

Further, in the case of **State of Haryana versus Ch. Bhajan Lal, 1992 SCC (Cri) 426**, the Apex Court has enumerated the circumstances in which exercise of inherent powers by High Court is justified, they are:-

1. 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.
2. 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 Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. 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 a case against the accused.
4. 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 a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the F.I.R. 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.

6. 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 in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide 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.

The Supreme Court further laid down in this connection as under:

"We also give a note of caution to the effect that the power of quashing a criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; 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 own whim and caprice."

Can the High Court quash criminal proceedings on the ground of delay in prosecution and conduct of trial?

Speedy trial has been recognized as a part of right to life and liberty guaranteed under Article 21 of the Constitution. In **Hussainara Khatoon versus Home Secretary, State of Bihar, 1979 AIR (SC) 1360** , Bhagwati, J. observed as follows: "We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in ***Maneka Gandhi v. Union of India,***

AIR 1978 Supreme Court 597. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his relief. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be "reasonable fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial is an integral and essential part of the fundamental right of life and liberty enshrined in Article 21. "

Now, the next question is whether criminal proceedings can be quashed on account of delay? Two Full Benches of Bihar High Court in **Madheshwardhari Singh v. State of Bihar, AIR 1986 Patna 324 (FB) and State v. Maksudan Singh, AIR 1986 Patna 38 (FB)** have held that criminal proceedings are liable to be quashed on account of long delay in proceedings. The same was reiterated by Supreme Court in the case of **S. Guin versus Grindlays Bank Ltd., 1986 SCC (Cri) 64**. However, the Supreme Court in the case of **A.R. Antulay versus R.S. Nayak, AIR 1992 SC 1701**, has taken a somewhat different view. In this case, instead of quashing the proceedings on the ground of delay, the Court has issued directions to the trial court to conclude the trial in a time

bound a manner, expeditiously, by conducting hearing on daily basis. Further, the accused, if ultimately acquitted, can claim compensation from the State for wrongful deprivation of right of life and liberty – **Rudul Sah versus State of Bihar, (1983) 4 SCC 141**.

What is the appropriate stage for invoking the inherent powers of the High Court?

No limitation period has been prescribed for applications under Section 482 Cr.P.C. However, application has to be filed within reasonable time. The Supreme Court in the case of **M/s Pepsi Foods Ltd. versus Special Judicial Magistrate, 1998 SCC (Cri) 1400**, has held that, "no doubt the Magistrate can discharge the accused at the stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceedings quashed against him when the complaint does not make out any case against him and he still has to undergo the agony of a criminal trial". Similarly, Supreme Court in the case of **Madhavrao Jiwaji Rao Scindia versus Sambhajirao Chandrojirao Angre, 1988 SCC (Cri) 234**, has held that, "when the prosecution is sought to be quashed at the initial stage, the test to be applied by the court is as to whether the uncontroverted allegations, as made, prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may

while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage". Therefore, the right time for invoking the inherent powers of High Court for quashing of the FIR and other criminal proceedings cannot be circumscribed but, an accused must approach the High Court at the earliest and preferably before framing of the charge.

Can power under Section 482 Cr.P.C. be used to review a judgment?

There is no inherent power of High Court to review or reconsider a previous judgment of the High Court in a criminal matter except where the previous judgment is pronounced without jurisdiction or in violation of the principles of natural justice or possibly in a case where it was obtained by an abuse of the process of Court which would really amount to its being without jurisdiction. There is another reason why a judgment passed in a criminal matter cannot be reviewed – It is because of the express bar contained in Section 362 Cr.P.C. which lays down that no Court shall alter or review its judgment or final order disposing of a case, except to correct a clerical or arithmetical error. Therefore, once a judgment has been pronounced by a court exercising criminal jurisdiction, its judgment is final, and can only be challenged before an appellate or revisional court, as per the provisions of the Code.

Can the inherent powers be used to restore any matter dismissed in default or for non-prosecution?

Yes, the court has inherent power to restore any matter dismissed in default or dismissed for non-prosecution on sufficient reason being shown. However, the power to restore any matter dismissed in default are vested only in the High Court and subordinate courts cannot restore

a matter dismissed in default or dismissed for non-prosecution. **Ram Naresh Yadav versus State of Bihar, AIR 1987 SC 1500**.

Whether, criminal proceedings can be stayed, if a civil suit in respect of the same matter is pending?

It depends on the facts of each case. If the object of the criminal proceedings, instituted while a civil suit in respect of the same matter is pending, is in reality to prejudice the trial of the civil suit by a preliminary enquiry into the subject matter of the suit or to coerce the accused to enter into a compromise, it will only be just and fair to stay the criminal proceedings. In the leading case of ***Bennett v. Horseferry Road Magistrates' Court, (1993) 3 All ER 138***, on the application of abuse of process of the court, it was held that if the court is satisfied that the proceedings are in fact an abuse of process of the court, it may stay of prosecution. Such a situation could arise in the following circumstances:

(i) where it would be impossible to give the accused a fair trial; or

(ii) where it would amount to misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.

Also see **Chandran Ratnaswami Versus K.C. Palanisamy & Ors. 2014 (1) SCC (Cri) 447**.

Further, the Supreme Court in the case of **Inder Mohan Goswami versus State of Uttranchal, AIR 2008 SC 251**, has held that the courts have to ensure that criminal proceedings are not used as an instrument of harassment or for seeking private vendetta or with ulterior motive to pressurize the accused. Refusal to quash such proceedings was held to be improper. The inherent powers under Section 482 Cr.P.C. are there

for advancement of justice. Injustice by abuse of the process of court can be prevented by exercising inherent powers. Such powers have to be used when facts are incomplete or hazy or no evidence is produced in support of the facts.

Can the inherent powers of the High Court be invoked to order CBI investigation?

Yes, there is no bar on the exercise of inherent powers of the High Court to order investigation by CBI or other specialized law enforcement agency. This is especially so because in the case of **Sakiri Vasu versus State of U.P., 2008 (2) SCC 409**, the Supreme Court has categorically held that a Magistrate cannot order investigation by a specialized agency like CBI. Therefore, the only remedy left with the petitioner is to approach the High Court under 482 Cr.P.C. seeking investigation by CBI or other specialized agency. Also see **Rhea Chakraborty versus State of Bihar & Ors. Transfer Petition (Criminal) 225 of 2020**.

Is the bar contained in Section 397(2) and 397(3) Cr.P.C. applicable to petition under Section 482 Cr.P.C.?

Section 482 Cr.P.C. begins with nonobstante clause, i.e. “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 the abuse of the process of any court or otherwise to secure the ends of justice.” Therefore, the bar contained in Section 397(2) Cr.P.C. on exercise of revisional jurisdiction in case of interlocutory order is not applicable to a petition under Section 482 Cr.P.C. Availability of alternative remedy of criminal revision under

Section 397 Cr.P.C. by itself cannot be a good ground to dismiss an application under Section 482 Cr.P.C. Similarly, the bar contained in Section 397(3) Cr.P.C. on a second revision petition is not applicable to a petition under Section 482 Cr.P.C. **Prabhu Chawla Versus State of Rajasthan, AIR 2016 SC 4245**.

Can the inherent powers of High Court be invoked to quash FIR after settlement between the parties?

In case the parties have settled the dispute amongst themselves and do not want to continue with the proceedings, then the continuation of criminal proceedings will be a share waste of time and will be abuse of process of the Court. In such a case, if the offences are compoundable, they can be compounded by the trial court itself as per the provisions of Section 320 Cr.P.C. However, difficulty arises when the offences are non-compoundable. In such a case, the only remedy available to the parties is to approach the High Court under Section 482 Cr.P.C. for quashing the FIR and consequential proceedings on the basis of compromise. In **B.S. Joshi Versus State of Haryana, 2003 AIR (SC) 1386**, the Supreme Court has held that the bar contained in Section 320 (9) Cr.P.C. to compounding of non-compoundable offences is not applicable to Section 482. In this case, the dispute related to matrimonial discord. Further, in the case of **Gian Singh versus State of Punjab, AIR 2012 (SC) (Cri) 1796**, the Supreme Court has categorically held that inherent powers should not be exercised to quash criminal proceedings on basis of settlement in serious offences which affect the society at large. It has been held that, “in respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude

under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed".

Can the inherent powers of the High Court be invoked to protect the life and liberty of couples who get married against the wishes of their parents and family (run away couples)?

Yes, right to life and liberty is enshrined as one of the fundamental rights in our Constitution. Article 21 of the Constitution says that no person shall be deprived of his life and personal liberty, except according to procedure established by law. However, due to rigid caste system in our country, inter-caste marriages are still considered a taboo. The couples who go in for such inter-caste marriages, also called run-away couples, are often harassed, humiliated and subjected to violence

by their families who see it as dishonourable. Inter-caste marriages are not illegal as per the Hindu Marriage Act. Every person who has attained the age of majority (21 years in case of husband and 18 years in case of wife) is legally entitled to choose his/ her life partner. At the most, if the parents of either boy or girl are not satisfied with the choice of life partner by their children, they can cut-off socially from them. It is often seen that the Police instead of providing run away couples with security, registers false cases of kidnapping against the husband and his relatives. Therefore, in such an eventuality run away couples can seek protection of their life and liberty by filing a petition under Section 482 Cr.P.C before the High Court. The High Court in exercise of its inherent powers directs the concerned police to protect the life and liberty of such run away couples. The Supreme Court in its landmark judgment **Lata Singh versus State of U.P., 2006 (3) RCR (Criminal) 870** has stamped its approval on grant of protection to run away couples by High Courts under Section 482 Cr.P.C.

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