

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Evolving Jurisprudence on Quashing Criminal Proceedings under Section 482 of Code of Criminal Procedure, 1973

MANISH AWANA¹

ABSTRACT

The best legislators can legislate upon certainties, at most, some uncertainties. Prediction of the future is not a legislative means to indefinite issues at a point in time that are yet to be determined. It means that legislation complete in itself may well need solutions at a future point in time. To brace any such events, extraordinary tools exist to guide a Court of Justice. One such power well within a Court is referred to as Inherent Power. This paper highlights the developing jurisprudence through case laws concerning Section 482 of the Code of Criminal Procedure (CrPC) 1973.

Keywords: Criminal Proceedings, 482 CrPC, Inherent Power, Jurisprudence, Quashing.

I. INTRODUCTION

The wisdom behind legislative enactment often faces testing times when justice seems a distant dream due to procedural and technical obstacles. The doctrine which addresses the above challenge is derived from “**Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest**”² It means when the law gives anything to anyone, it gives also all those things without which the thing itself cannot exist. In simple terms, it conveys that in situations wherein the absence of procedural provision expressly tackling a given problem is missing, a Court still has the power to ensure Justice by correcting any wrong done or likely to be done.

The inherent powers vested in a court ensure the efficient and successful administration of justice. The scope of this paper is restricted to the Inherent power of the High Court under **section 482 of The Code of Criminal Procedure, 1973**.³ The territorial extent of this legislation is the Republic of India. In *Madhu Limaye Vs. State of Maharashtra*,⁴ it was observed that the inherent power is expansive, yet as a rule of practice, its exercise is limited only in rare or exceptional situations. To ensure the sparing use of inherent power by the High

¹ Author is a Research Scholar at Banaras Hindu University, India.

² Dinesh Dutt Joshi v. State of Rajasthan [(2001) 8 SCC 570

³ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India)

⁴ AIR 1978 SC 47

Court, the following principles laid by the Supreme Court have to be kept in mind:

- If a specific provision in law exists to solve a grievance, refrain from using inherent power.
- To prevent abuse of process and to secure justice
- Not to bypass express legislation or provision contained therein.

The nature of power under 482 CrPC was reiterated in *Pankaj Kumar Vs. State of Maharashtra*⁵ is exceptional and not the rule. The legislation's language clearly considers that what may arise cannot be ascertained in all possible cases, nor can a straight formula be adopted. The discretionary mechanism prevents undue harassment through abusing judicial means by vindictive litigants for oblique motives. A noteworthy feature is the power to quash a proceeding even if offences were not compoundable.⁶ It is visible when the court finds that the parties are relatives and have compromised; also, prosecution witnesses have changed their stance away from the version forming the prosecution's narrative. In such cases, the court finds precious time of court will be exhausted without any success and remain a mere formality.⁷

A serious recapitulation of abuse of process: The practice of masquerading disputes of a civil nature into a criminal one has been a severe issue. It often results in activating the Criminal Justice System for no excellent cause but as a malafide score settlement technique to abuse the process of law. In *Chandran Ratnaswami Vs. KC Palanisamy*⁸ breach of an agreement between the parties was contested before a court of civil nature. The complaints were filed before a criminal court to exercise jurisdiction. The attempts to enforce criminal jurisdiction by the person repeatedly filing complaints were observed seriously. The court quashed the criminal proceedings and held it would amount to abuse of process if the object of a criminal proceeding is to prejudice the result in a pending civil suit by tactics such as coercion through filing a criminal case to result in a compromise. In such cases, a stay on criminal proceedings can be justified using inherent powers.

While acting as guardians of law and warriors of justice, the courts must ensure legal mandate is not ignored or overlooked. The concerned High Court must undo the wrong to secure the ends of justice. In *Vijay Kumar Meena Vs. Central Bureau of Investigation*,⁹ the person was accused of corruption. The accused faced a departmental inquiry and also a criminal case. The

⁵ AIR 2008 SC 3077

⁶ SEC 320 CrPC

⁷ AIR 2012 SC 499

⁸ AIR 2013 SC 1952

⁹ 2013 CrLJ 2113

department exonerated the accused as no involvement was found. The accused contended for quashing of criminal proceedings based on findings reported by departmental inquiry. The High Court disagreed with the petitioner and held mere exoneration in a departmental inquiry cannot be an automatic ground for quashing as parameters of evidence are very different in an internal examination and investigation by a specialized agency.

If a court has taken cognizance and it is brought to the notice of the High Court, the allegations contained in the complaint or chargesheet, as the case may be, did not constitute any offence. In *Sharda Prasad Sinha Vs State of Bihar*¹⁰ it was rightly held that the High Court has inherent power to quash such a proceeding. In *JP. Sharma Vs. Vinod Kumar Jain*,¹¹ the Supreme Court, reiterated that where an allegation contained in a complaint discloses the commission of an offence or, in case of first information report (FIR), a cognizable offence. It is not open for a High Court to verify the truthfulness of allegations and interfere at this stage, nor the sufficiency of evidence be questioned. This is done to prevent an investigation from being delayed or derailed by the petitioners seeking to quash proceedings, recently in *Jagmohan Singh Vs. Vimlesh Kumar*¹² the Supreme Court of India, stated that a High Court must not embark upon reliability of evidence. The power must be used sparingly with caution, specifically within the bounds of section 482 CrPC.

The Constitution of India¹³ establishes the Supreme Court as the apex judicial institution in the country. The hope for the urgent and efficient disposal of proceedings like quashing in criminal matters brings petitioners an opportunity to use Article 32 to justify a means to an end. However, in *Gayatri Prasad Prajapati Vs. State of Uttar Pradesh*,¹⁴ the honourable Supreme Court held when a petitioner has a remedy under section 482 CrPC before a High Court. The practice by the Supreme Court under Article 32 of the Indian Constitution for quashing the first information report must be avoided. It is important to note that the judgement is not restrictive in spirit but a guiding one. In essence, it requires a party to approach the proper forum to better utilize remedies already available under the Code of Criminal Procedure.

A ground of contention between parties regarding filing false and frivolous cases is often attributed to political affiliations. In such cases, the complaint or first information report, as the case may be, is based upon political vendetta. The matters relating to the quashing of points mentioned hereinbefore can be answered through observation made in *Sheonandan Paswan*

¹⁰ AIR 1977 SC 1754

¹¹ (1986) 3 SCC 67

¹² CrI. Appeal No.741 of 2022

¹³ INDIA CONST.

¹⁴ WP (CrI) 457 of 2021

Vs. State of Bihar,¹⁵ wherein it was held, a complaint that may be caused due to political vendetta is not in itself a ground to vitiate or quash criminal proceedings.

In *Municipal Corporation of Delhi Vs. Ram Krishna Rohtagi*,¹⁶ the court apprised that 482 CrPC is a verbatim copy of 561-A of the old Code, which was used to quash proceedings and expunge remarks made against subordinate courts or witnesses which was uncalled for. This wisdom of exercising power was not merely a revisional power but a corrective measure to prevent abuse of process. Also, 482 CrPC is not inconsistent with 397 CrPC, though, sometimes it may overlap, but inherent powers are to be exercised when a litigant has no other remedy to avail under the statute. In *Dhanalakshmi Vs. Prasanna Kumar*¹⁷ it was stated, interference with criminal proceedings is justified if offence is not disclosed in a complaint or it is frivolous. In *Raj Kapoor Vs. State*¹⁸ under section 482 CrPC, the self-restraint for not exercising inherent power by the High Court is not absence of jurisdiction but preventing invasion of areas for which recourse is already present under some other statutory provision.

II. DEVELOPING JURISPRUDENCE

The illustrative guidelines by the Supreme Court indicating contingencies where the High Court can quash criminal proceedings were laid down in *Nagawwa Vs. Veeranna Shivallngappa Konjalgi*,¹⁹ with respect to procedures under 202 and 204 CrPC

- If allegations in the complaint make out absolutely no case
- If allegations are absurd and inherently improbable
- If the Magistrate exercised discretion arbitrarily on evidence or inadmissible material.
- If a complaint has legal defects like no sanction or competent complainant's absence.

The above points duly keep in mind the right of an accused to be presumed innocent and prevent gross injustice. It seeks to control and rectify arbitrariness that arises from discretion or legal defect that does not align with the rule of law.

1. No Strict Formula: The court disapproved of any desirability to lay down some inflexible rule to exercise inherent power. It is considered that a criminal prosecution should not become a tool of harassment. It was best left for the concerned High Court to decide jurisdiction per

¹⁵ (1987) 1 SCC 288

¹⁶ (1983) 1 SCC 1

¹⁷ AIR 1990 SC 494

¹⁸ (1980) 1 SCC 43

¹⁹ (1976) 3 SCC 736

facts and circumstances in the interest of justice.²⁰ To prevent weaponization of criminal proceedings for ulterior motives, 482 CrPC is formulated.²¹

2. Evolved Guidelines: An attempt to lay illustrative guidelines to prevent abuse of process and secure ends of justice was again made by the Supreme Court. In *State of Haryana Vs. Bhajan Lal*,²² the use of extraordinary power under Article 226 of the Indian Constitution and Section 482 of the Code of Criminal Procedure was discussed. However, it was clearly stated that no rigid or exhaustive list of situations or categories can be mentioned to classify in a strict sense. Simply put, it was neither feasible nor possible to include expressly what can be done or exclude what cannot be.

The power can be exercised sparingly and with circumspection in the rarest of cases:

- Where allegations in the complaint or First Information Report (FIR), if accepted entirely, do not constitute a prima facie offence or case.
- Where allegations in FIR or any other accompanying matter do not disclose a cognisable offence.
- Where evidence collected concerning complaint or FIR does not disclose the commission of any offence, and no case is made against the accused.
- Where allegations in FIR constitute a non-cognizable offence, not a cognizable one. The investigation is subject to section 155(2) CrPC. This means an order of the magistrate becomes a pre-requisite for starting the investigation.
- Where allegations are so absurd and improbable that no prudent man can conclude a sufficient ground for proceeding against the accused.
- Where there is an express legal bar, or express provision exists for efficacious redressal of grievances of the aggrieved party.
- Where a proceeding is malicious or malafide based on an ulterior motive for wreaking vengeance due to personal grudges against the accused.

The Supreme Court again examined the use of inherent power and its scope in the *Rukmini Narvekar Vs Vijaya Satardekar*²³ case; the Supreme Court categorically accepted an unlimited extent of power under Article 226 and Section 482 CrPC. It also acknowledged that the High Court was free to consider the material on the part of or on behalf of the accused to decide if a

²⁰ (2007) 12 SCC 1

²¹ (2021) 5 SCC 524

²² 1992 Suppl (1) SCC 335

²³ (2008) 14 SCC 1

charge framed by the trial court was appropriate or even maintainable.

3. Four Point Test: In *Rajiv Thapar Versus Madan Lal Kapoor*,²⁴ the Supreme Court examined the process of quashing at various stages like issuing of process, committal, and framing of charges., that is, before the actual commencement of trial. The consequences of quashing were discussed, especially given the effect on the prosecution or complainant, as the case may be. The court observed that it negates the opportunity to lead evidence of the allegations levelled by the prosecution or complainant against the accused. Therefore, the High Court must proceed with great caution after it is fully satisfied that the material adduced by accused will undoubtedly displace and discard allegations levelled by the opposite party. It is based upon the rule that a reasonable or prudent person will dismiss the accusations as false after relying on the material presented by an accused person. Similarly, in such a situation, judicial conscience persuades the use of power to secure justice and prevent abuse of the court process.

The Supreme Court outlined four points/steps to determine the veracity of prayer for quashing raised by an accused under 482 CrPC:

- Whether the material relied upon by the accused is of sterling and impeccable quality?
- Whether material relied upon by the accused is sufficient to reject and overrule allegations in the complaint, i.e., the material would persuade a reasonable man to dismiss allegations as false?
- Whether material relied upon by the accused has not been refuted or cannot be refuted by the other party?
- Whether proceeding with trial would result in abuse of process or ends of justice will not be served?

The Supreme Court held that if all four steps laid above are answered in the affirmative, it would be just for the judicial conscience of the High Court to become active through the use of inherent power under section 482 CrPC.

The developing jurisprudence relating to exercising inherent power to quash or not to quash proceedings has paved through traditional contentions, though in exceptional cases. About the above statement, it must be noted that certain offences cannot be compounded under the law for the time being in force. The rule behind the same is grave, and heinous violations are not merely against persons but society.

²⁴ CrI. Appeal No. 174 of 2013

4. Consent, Exception and The Rule: Generally, consent or compromise between parties is not considered an appropriate and adequate ground for the quashing of criminal proceedings in some instances. However, as this research paper moves across, various judgements, guidelines and tests were never absolute and not based upon a strict formula to follow. Given the same, the role of the High Court and, subsequently, the Supreme Court becomes worthy of greater deliberation in *Kapil Gupta Vs. State of NCT of Delhi*,²⁵ in the instant case, an FIR was filed against the appellant for the offence of rape under Section 376 of the Indian Penal Code (IPC).²⁶ After that, the present appellant filed an FIR for extortion against the alleged victim in the previous case. The investigation was under process in both cases, but the trial did not commence, and both parties, i.e., the present appellant (man who is accused in rape case but victim in extortion case) and respondent number two (woman who is victim in rape case but accused in extortion case) entered into a compromise. The respondent approached the Delhi High Court to quash of proceedings for the Rape case, but the court dismissed the application. **The Supreme Court considered special circumstances where the young lady contended that she would be robbed of her prime youth by going through trial as a victim in one case and as an offender in another.** It would add to her problems and not relief. The court also noted that even if the trial is allowed, it will only end in acquittal as the respondent is not supporting the case of the prosecution. The general thought of directed wisdom would usually not permit quashing in severe offences like rape. However, in peculiar facts and circumstances, the Supreme Court agreed to the prayer of the respondent woman that she would be saved from the further agony of facing two criminal trials.

III. CONCLUSION

The nature of society develops with changing times and circumstances. The prior notions of morality are not indifferent; they also transform over time. Even the most robust of judicial systems are tested through unique challenges in challenging times. It must also be remembered that legislation drafted by the best of minds may not always be sound on matters that are silent and yet inseparable or to appear in future. i.e., beyond the strict letters of the law. However, the court must maintain the true spirit of a free, fair and impartial judicial system.

“It is not Wisdom, but Authority that makes a law - Thomas Hobbes”²⁷

In the context of the provision for inherent powers expressly recognized under 482 CrPC. The

²⁵ CrI. Appeal No.5806 of 2022

²⁶ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

²⁷ Jeff Pojanowski, *Reevaluating Legal Theory*, <https://www.yalelawjournal.org/review/reevaluating-legal-theory> (last visited Sep 17, 2023).

legislative authority acknowledges implicitly the wisdom necessary to ensure justice in matters not explicitly provided for under the statute. It would be correct to say that judicial wisdom adds to the existing legislative knowledge initially based upon the authority to legislate granted by the Indian Constitution. If legislation is a ship, the legislator is the shipwright, police and prosecution alike, crew passengers are parties, the court is the captain's deck, and judge the captain is bound by rules, but when there are extraordinary tides. The captain is to decide saving the ship may mean saving it all. This illustrates that legislators and legislation cannot predetermine or forecast everything in a strict sense. Therefore, using certain powers is justified within the bounds of law in extraordinary situations to quash criminal proceedings.
