



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

INHERENT POWERS OF INDIAN HIGH COURTS IN CRIMINAL JUSTICE SYSTEM

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ABSTARCT

The procedural aspects under Indian Criminal Justice system is based upon the system established by the British in India during the British Raj. At recent times, the system has remained the same, more or less, without any major changes. If it is looked closely, there are fault lines which are existing in the implementation of the Criminal Justice System. The implementation rests with 3 Institutions, i.e. the Police, Courts of Law and Prisons. The Courts, especially with their Inherent Powers, play a very vital role in the implementation of law and procedure when it comes to Indian Criminal Judicial System.

INTRODUCTION

Mark Twain said: “A lie can travel half way round the world, while the reality is putting on its shoes”. What is happening in the present day world is ample proof for this. In this context the Inherent Powers of High Court in the Criminal Justice assumes importance, for they exist to protect the innocent and punish the culprit in the quest for truth.

INDIAN PERSPECTIVE OF INHERENT POWERS

Criminal Justice is the crucial and principal branch of the Judicial System. It decides questions of life and liberty of an individual or citizen of the State. Anybody can make allegations against anybody at any time. But, such complaint or allegation must pass tests at various levels like Investigation, Enquiry and Trial. The procedural aspects should be complied with its letter and spirit. The Criminal Justice system is predicated on the principles of “*proving beyond reasonable doubt*”. Any procedural lapse which has caused serious prejudice to the accused and also any lack of proof in support of the allegation or charges must lead to acquittal or rejection of such complaint or allegation. Every person is innocent until proven guilty, the

right of the accused to a fair, as well as a speedy trial etc., all form an inextricable part of human dignity and right to life.

INDIAN PERSPECTIVE OF CRIMINAL JUSTICE

The Higher Judiciary in India has expanded the scope of Article 21 of Constitution of India in numerous decisions. Many modern concomitant rights or facets of right to life and liberty have been given a vast meaning. Fair Trial and Investigation, Right to Compensation, Right to Reputation, Right to speedy investigation and Trial, Right against abuse of process of law, Right to have free legal aid etc., are the modern concepts which are result of Judicial Activism.

The values of Constitutionalism are not shaped by the exigencies of current situations, political considerations or, for that matter, public perception; they are based upon a deeper commitment to the social values that are inherent in our Constitution.

The Higher Judiciary is playing a dynamic role under Section 482 and 483 of Criminal Procedure Code and Article 226 and 227 of the Constitution of India by invoking its statutory and constitutional power under the following heads in order to reform or make revolution in administration of Criminal Justice.

1. To protect fundamental rights.
2. To secure the ends of justice.
3. To prevent abuse of process of law.
4. To do complete justice.
5. To give effect to any order under the Code of Criminal Procedure, 1973.
6. To Remove doubt or ambiguity.

Both these provisions are going hand in hand though they belong to different categories known as 'Statutory Remedy' and 'Constitutional Remedy' respectively. The instances mentioned hereinabove have led the quashing of many cases. Directions were issued in numerous cases to the Judiciary, Executive and Legislature. Errors committed by subordinate Judiciary and Investigating Agency or State are to be set right under the Inherent Powers of the Court. But, the Courts are expected to take care and act cautiously such that cases of legitimate litigation should not be scuttled or stalled under the guise of Inherent Jurisdiction. Such power should be exercised sparingly and in rarest of the rare cases.

JUDICIAL APPROACH IN INDIA

Under Section 482, the High Court can quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of the Court or that the ends of justice require that

such proceedings ought to be quashed. Today the law has evolved from time to time and now it has reached to a stage where even bleak chance of conviction is also considered as a ground for Quashing of Criminal Proceedings exercising Inherent Powers of the High Court. The Hon'ble Supreme Court in the famous case of *State of Haryana Vs. Bhajanlal*¹ has laid the following, broad parameters with respect to the quashing of Criminal Cases:

- (a) Where the allegations made in the F.I.R. 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.
- (b) Where the allegations in the F.I.R. 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.
- (c) 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.
- (d) Where the allegations in the FIR 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.
- (e) Where the allegations made in the FIR 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.
- (f) Where there is an express legal bar engrafted in any of the provisions of the Code (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.
- (g) 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.

No legislative enactment dealing with procedure can foresee and provide for all the possibilities of cases that may eventually arise. The Courts, therefore, have Inherent Powers aside from express provisions of law which are necessary for the right discharge of the functions and duties imposed upon them by law. That is the doctrine which finds expression in a section which merely recognizes and preserves inherent powers of

¹ *State of Haryana Vs. Bhajanlal*, AIR 1992 SC 604

the High Courts. All Courts, be it civil or criminal, has, in the absence of any express provision, as inherent in their constitution, all that powers as are necessary to do right and to undo a wrong in course of administration of Justice on the principle *uando lex aliquid alique concedit, conceditur et id sine quo res ipsa esse no potest* (when the law gives a person anything, it gives him that without which it cannot exist).

It is well settled that the powers under Section 482 have no limits. Of course, where there's more power, it becomes necessary to exercise utmost care and caution while invoking such powers. Exercise of such power would depend upon the facts and circumstances of each and every case but with the only purpose to stop abuse of process of any court or otherwise to secure the ends of justice². (Para6).

In general, unless a grave illegality is committed, the superior Courts must not interfere. They should allow the Court which is seized of the matter to continue with it. There is always an Appellate Court to correct the errors. One should keep in mind the principle behind Sec.465 of the Cr.P.C. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a Court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Frequent interference by superior Courts at the interlocutory stages tends to defeat the very ends of justice they intended to serve. It shouldn't be that a person with enough means is in a position to keep the law at bay. That gives out the meaning of the failure of the system³.

Section 482 Cr.P.C saves the inherent powers of the High Court and its language is kind of explicit when it says that nothing within the Code shall be deemed to limit or affect the inherent powers of the High Court to form such orders as could also be necessary to give effect to any order under the Code, or to stop or abuse of the process of any Court, to achieve the ends of justice. A procedural code, however exhaustive, cannot expressly provide for all time to return against all the cases or points which will possibly arise, and so as that justice may not suffer it's necessary that each Court must in proper cases exercise its Inherent Power to secure the ends of justice or for the purpose of carrying out the other provisions of the Code. It is a well-established principle that every Court has an inherent power to act '*ex debito justitiae*' to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court⁴.

CONCLUSION

There is no straight jacket formula or yard stick to deal under Inherent Powers. The exercise of this power depends upon the facts and circumstance of the cases. Unless a grave illegality is committed, the Superior Court must not interfere. They must allow the Court which is seized of the matter to continue with it, there is

²B. S. Joshi Vs. State of Haryana, (2003) 4 SCC 675; 2003 SCC (Cri) 848; AIR 2003 SC 1386; (2003) 2 KLT 1062; 2003 Cri LJ 2028 at Para 6.

³Santosh De v. Archana Guha (1994) 2 SCC 420; 1994 SCC (Cri) 546; (1994) 1 Crimes 548; (1994) 31 ACC 250.

⁴Hamida v. Rashid, (2008) 1 SCC 474; (2008) 1 SCC (Cri) 234; (2007) 54 AIC 19 (SC); 2007 Cri LJ 3422; (2008) 105 Cut LT 410; (2007) 4 All LJ 206 at Para 6.

always an Appellate Court to correct the errors. It is well established principle that every court has Inherent Power to act *ex debito justitiae* to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court or to protect Fundamental Rights of Citizens.

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