

SCOPE OF THE SUBORDINATE JUDICIARY UNDER SECTION 482 OF CRPC

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ABSTRACT**

Section 482 of the Code of Criminal Procedure (CrPC) extends plenary powers to the High Courts to deal with any form of criminal matters. But whether these powers percolate down to the magistrates courts is a question because time and again these courts are unsure as to whether they can assume these powers to themselves to adjudicate criminal cases within their prescribed jurisdiction. The objective of this paper is to find out whether the subordinate judiciary can also enjoy those inherent powers granted under Section 482 of CrPC. The paper is based mainly on the analyses of judgments both in favour and against extending the inherent powers to the subordinate judiciary dealing with criminal matters. The paper argues that when subordinate civil courts can pass orders under Section 151 of the Code of Civil Procedure (CPC), why can't the magistrates courts pass orders invoking Section 482 of CrPC. The paper concludes by saying that the Indian criminal justice system will be greatly served if the inherent powers granted to the High Courts under Section 482 of CrPC are extended to the subordinate judiciary. The methodology adopted in this paper is doctrinal and the method employed (to reach at conclusive findings) is analytical.

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1. Introduction

On 29th October 1993, the Supreme Court of India while deciding the case of *K. P. Tiwari v State Of M.P* held, “Our legal system acknowledges the fallibility of the judges and, hence, provides for appeals and revisions. A judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said that a judge who has not committed an error is yet to be born.”¹

So, what happens when a Magistrate or a Sessions judge commits errors while passing interlocutory orders? The Code of Criminal Procedure (CrPC) is completely silent as to the remedy in such circumstances. The Code under Section 362,² however, provides for correction of clerical and arithmetic mistakes by Magistrates after the final judgment is passed. Under identical circumstances in a Civil Court, the Civil Judge or Munsif takes recourse to inherent powers as under Section 151³ of Civil Procedure Code (CPC). Just like CPC, CrPC too has its provision saving inherent powers under Section 482 but whether a Magistrate or for that matter any other Criminal Court in subordinate judiciary, including Sessions Court, can make use of this provision or not is a question over which the higher judiciary seems to have different and at times even contradictory views.

2. Defining Inherent Powers

In a general sense, inherent powers are those that permanently exist in a particular authority by virtue of its very existence without being derived from any other authority. Different law dictionaries and Judges have defined the term inherent powers as follows:

¹ 1994 CrLJ 1377 (SC).

² Code of Criminal Procedure, s 362 - Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

³ Code of Civil Procedure, s 151 - Saving of inherent powers of court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

(a) Black's Law Dictionary defines 'inherent powers' as "Existing in something as a permanent, essential, or characteristic attribute."⁴

(b) Webster's New World Law Dictionary defines it as "A power that must be deemed to exist in order for a particular responsibility to be carried out."

(c) John Bouveier defined inherent powers as "An authority possessed without its being derived from another. It is a right, ability or faculty of doing a thing, without receiving that right, ability or faculty from another."

(d) Justice Anderson defined⁵ inherent powers as "The power of each court over its own process is unlimited; it is a power incident of all courts, inferior as well as superior; were it not so, the court would be obliged to sit still and (to) see its own process abused for the purpose of injustice. The exercise of the power is certainly a matter of the most careful discretion."

By a simple understanding of the various definitions it appears that any authority vested with any power or responsibility needs certain ancillary/allied powers to discharge the said responsibility properly and effectively and the same principle applies to judicial authorities/courts as well.

3. The Logic Behind the Development of Inherent Powers

The idea of inherent powers is not new to the Indian legal system, for the first time it figured as Section 151 of CPC. So far as criminal procedural law is concerned, prior to 1923, there was no provision dealing with inherent powers or any such power in CrPC and in 1923 this provision was added under Section 561A of CrPC, 1898, which later became Section 482 under CrPC, 1973.

⁴ Oxford Dictionary, 'inherent' <<http://www.oxforddictionaries.com/definition/english/inherent>> accessed 12 March 2018.

⁵ *Cocker v Tempess* 1841.

The Hon'ble Privy Council in *Jai Berham's case* held, "every Court exists to do real and substantial justice or to prevent abuse of its own process and hence, possesses inherent power to achieve these ends, where the code is silent on any matter."⁶ Thus, prior to insertion of Section 482 CrPC, that is before amendment when earlier identical provision was in force as under Section 561A CrPC, the Privy Council interpreted in favour of inherent powers for every Court including that of the Magistrates.

Administering justice is the main objective of courts and while so doing they have to have powers enabling them to pass necessary orders for the ends of justice even when the statute fails to provide for the same. Speedy trials aid the administration of justice and for avoiding delay it is necessary that the grassroots courts are empowered to deal with exigencies by way of exercising inherent powers; if their authority is limited to the literal words of a statute, their ability to cater to justice stands retarded. The doctrine of inherent judicial power licenses the courts to take necessary actions to fulfil their statutory and constitutional functions even when such actions are not specifically authorised by either constitutional text or by express provisions in a statute.

4. Section 482 CrPC Revisited

Section 482 CrPC lays down, "*Saving of inherent powers of High Court. 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 abuse of the process of any Court or otherwise to secure the ends of justice.*"

The language of provision shows it is an enabling provision, declaring for the sake of clarity that High Court's power is not affected and that as superior Court it has power of interference for meeting the ends of Justice. Nowhere is there any suggestion for exclusion of the Magistrate's power to invoke the provisions of Section 482.

⁶ AIR 1922 PC 269.

5. The Two Contradictory Approaches Regarding Section 482

One school of thought holds that just like any other Court of Law the Magistrates too have inherent powers and it exists by virtue of the basic principle that no legislation can provide for in anticipation to address all situations that possibly can arise in future and therefore, the Courts have inherent power to pass necessary orders for ends of justice in such circumstances.

And there exists a contrary view that the Magistrates do not enjoy any inherent powers for the simple reason that Section 482 CrPC does not confer or reserve any such power directly or expressly on the Magistrates.⁷

The following are a few judgments that indicate that Magistrates do not enjoy inherent powers under Section 482 of CrPC.

(1) In 1977, the Hon'ble Supreme Court in *Bindeshwari Prasad's Case* held, "Even if Magistrate had any jurisdiction to recall the order, it could have been done by another judicial order after giving reasons that he was satisfied that a case was made out for recalling the order. We, however, need not dilate on this point because there is absolutely no provision in The Criminal procedure Code of 1898 (which applies to this case) empowering a Magistrate to review or recall an order passed by him. Criminal Procedure Code does contain a provision for inherent powers, namely, Section 561A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of Civil Procedure Code, the Subordinate Criminal Courts have no inherent powers. In these circumstances, therefore, the learned Magistrate had absolutely no jurisdiction to recall the order dismissing complaint".⁸

(2) In 2004, a similar view was expressed by the Supreme Court in *Adalat Prasad v Rooplal Jindal* where Court held that, "the observation of this Court in the case of

⁷ *A. S. Ganraya v S. N. Thakur* AIR1986 SC 1440.

⁸ *Bindeshwari Prasad Singh v Kali Singh* AIR 1977 SC 2432.

Mathew⁹ that for recalling an order of issuance of process erroneously, no specific provision of law is required would run counter to the Scheme of the Code which has not provided for review and prohibits interference at interlocutory stages. Therefore, we are of the opinion, that the view of this Court in Mathew's case (supra) that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law.”¹⁰

- (3) In 2009, in *Mithabhai Pashabhai Patel v. State of Gujarat*,¹¹, the Supreme Court held, “The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre- cognisance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four-corners of the Code.”

The following are a few judgments that indicate that Magistrates do enjoy inherent powers under Section 482 of CrPC.

- (1) In 1969 in *Pritam Singh v State*, the Allahabad High Court resorted to a judicious, as distinct from hyper technical, approach and interpreted this provision to mean that subordinate Criminal Courts have inherent powers and held that, “in case of an order which is a nullity there is no reason why the court, having discovered the mistake be not allowed to correct it and be compelled to adapt the lengthy process of referring the case to the High Court. In this case Court made a distinction between an erroneous order and an order which is a nullity and arrived at the finding that in case of erroneous order the subordinate court has no inherent power to rectify the mistake.”¹²
- (2) In 1992 Supreme Court in the case of K M Mathews recognised the inherent powers of Magistrate and held, “Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could

⁹ 1992 AIR 2206; 1991 SCR Supl. (2) 364.

¹⁰ *Adalat Prasad v Rooplal Jindal* (decided by the Supreme Court 25 August 2004).

¹¹ (2009) 6 SCC 332.

¹² *Pritam Singh v State* AIR1969 ALL 513.

be tried. It is his judicial discretion. No specific provision required for the Magistrate to drop the proceedings or rescind the process” and that, “to ask the accused to undergo the trial of the case merely on the ground of the issue of process would be oppressive. No person should be tried without a prima facie case.”¹³ Thus Supreme Court interpreted the provision and held that subordinate criminal court has inherent powers to drop the proceedings against an accused when no prima facie case could be made out against him.

- (3) In 2008, a similar view was expressed by the Supreme Court in *Sakiri Vasu v. State of Uttar Pradesh and Others*.¹⁴ The Court held, “It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.” The above discussion shows that the Supreme Court and Various High Courts have held different ,at times even contradictory, opinions and views as regards the question whether sub-ordinate Criminal Courts have inherent powers or not.

6. Section 482 CrPC per contra Sec. 151 CPC

Both Sec. 482 CrPC and Sec 151 CPC may be compared as both proceed on a similar fundamental assumption. None of these two provisions provides for any new powers; they only lay down that the inherent powers which the criminal courts or civil courts possess shall be protected and this is clearly spelled out to ensure that it is not understood that the only powers possessed by the courts are those expressly conferred by the Codes and no inherent power has survived the passing of the Codes.

¹³ 1991 SCR Supl. (2) 364.

¹⁴ (2008) 2 SCC 409.

In the case of *Harsh Kapoor v Smt. Komal Kapoor*, the Uttarakhand High Court held, “The intention of the Legislature enacting the code of Criminal Procedure and the Code of Civil Procedure vis-à-vis the law laid down by this Court it can safely be concluded that when there is a specific remedy provided by way of appeal or revision the inherent power under Section 482 Cr. P.C. or Section 151 C.P.C. cannot and should not be resorted to.”¹⁵

In *Padam Sen & Anr v State of U.P.*,¹⁶ the Supreme Court observed: “Inherent powers of Court are in addition to powers specifically conferred on the Court by the Code. They are complementary to those powers and, therefore, it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against intentions of the Legislation. It is also well recognised that inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.”

In *Manohar Lal Chopra v Rai Bahadur Rao Raja Seth Hiralal*,¹⁷ the Apex Court held: “the inherent jurisdiction of court to make orders *ex debito justitiae* is undoubtedly affirmed by Section 151 of the Code but inherent jurisdiction cannot be exercised so as to nullify the provision of the Code of Civil Procedure. Where the Code of Civil Procedure deals expressly with a particular matter, the provision should normally be regarded as exhaustive.”

In 2004 in *Subramaniam Sethuraman v State of Maharashtra and another*,¹⁸ the Supreme Court held: “interlocutory orders may be challenged as under Section 482 CrPC”. The provision

¹⁵ *Harsh Kapoor and Others v Smt. Komal Kapoor* 2013 (2) U.D. 349 (decided on 21 August 2013 by Uttarakhand High Court).

¹⁶ AIR 1961 SC 218.

¹⁷ AIR 1962 SC 527.

¹⁸ 2004(13) SCC 324.

for Criminal Revision as under Section 397¹⁹ CrPC provides for revision of orders passed by Magistrates but sub section (2)²⁰ of Section 397 CrPC bars criminal revision of interlocutory orders and as such people aggrieved by interlocutory orders apparently had no relief under the Code of Criminal Procedure. And Supreme Court held that in such circumstances provisions of Section 482 CrPC can be invoked.

Interestingly, Section 397 CrPC gives revisional power to both High Court and Sessions Court. Whereas Section 482 CrPC, the exercise of which is lawful for the purpose of revision of interlocutory orders as per Supreme Court, confers such powers exclusively to High Courts. Thus a Sessions Court has power to revise final orders of Magistrates as under section 397 CrPC but has no power to revise interlocutory orders of Magistrate as under Section 482 CrPC.

A Civil Judge has power to revive or restore a plaint dismissed for default under Order 9 of CPC, but no such provision is provided in CrPC enabling the Magistrate to restore a complaint by invoking inherent powers under Section 482 CrPC. Enabling the Magistrate in this sphere will only help in expediting the process of adjudication.

In *Ram Chand & Sons Sugar Mills Pvt. Ltd. v Kanhayalal Bhargav*,²¹ the Supreme Court observed, “inherent power of the Court is in addition to and complimentary to the powers expressly conferred under the Civil Procedure Code; but that power will not be exercised if its exercise is inconsistent with, or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed

¹⁹ CrPC, s 397- Calling for records to exercise powers of revision. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order- recorded or passed, and as to the regularity of any proceedings of such inferior Court..”

²⁰ Section 397(2) CrPC - The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

²¹ AIR 1966 SC 1899.

by the said provisions. Whatever limitations are imposed by construction on the provisions of S 151 of the Code, they do not control the undoubted power of the Court to make suitable order to prevent the abuse of the process of the Court.” Under Section 151 CPC, 1908 Supreme Court reiterated the well established legal principle that “the Courts have unlimited and unrestricted powers under Section 151 CPC to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the Court”. So the broader philosophy behind enactment of Section 151 CPC and Section 482 CrPC are somewhat similar.

Inherent powers under section 482 vests solely in High Court and subordinate Criminal courts are not allowed to use inherent powers. The above discussion shows that many a times Section 482 were invoked to deal with matters like recalling of process mistakenly issued in offences triable by Magistrate, deleting any adverse remark made against any person and such matters of limited seriousness which can be dealt with Magistrates and by Sessions Courts in their revisional capacity.

Law’s vast outreach and conceivable potentiality of remedy is sought everyday by all and sundry, it is no more a domain of the rich and powerful. With both crime graph²² and population graph steeply rising,²³ there is urgent need to bring justice to one’s doorsteps. Recognising the inherent powers of Magistrates and Sessions Courts will further the cause of accessible and affordable justice.

On the other hand, as we witness an era of docket explosion before High Courts it is high time that the burden of High Courts is reduced by recognising the inherent powers of Magistrates, Sessions Court and subordinate Criminal Courts to deal with interlocutory matters and matters such as re-examining the order issuing process or correction of mistakes or review power of review and recall of orders other than those restricted by Section 362 CrPC.

²² National Crime Records Bureau, Ministry of Home Affairs, Crime in India- Statistics <ncrb.nic.in/StatPublications/CII/CII2015/FILES/Statistics-2015_rev1_1.pdf> accessed 5 March 2018.

²³ Trading Economics <<https://tradingeconomics.com/india/population.>> accessed 5 March 2018.

7. Various Reports Suggesting Expansion of Scope Under Section 482

Various recommendations made in law commission reports and others such as the Malimath Committee Report indicate that the scope of Section 482 of CrPC may be extended. The following are some of the observations of some of the Reports regarding expansion of the scope of Section 482 of CrPC.

(a) Report of the 14th Law Commission:- Though laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make it impossible to lay down provisions capable of governing every case which in fact arises. Courts which exist for the furtherance of justice should, therefore, have authority to deal with cases which, though not expressly provided for by the law, need to be dealt with to prevent injustice or an abuse of the process of law. This has led to the acceptance of the principle that even in cases where the law is silent and has made no express provision to deal with a situation which has arisen, the courts have inherent powers to do substantive justice and prevent an abuse of the process. In this light, the Commission recommended that the statutory recognition of such inherent power under Section 561A of CrPC should be vested in all subordinate criminal courts.²⁴

(b) Malimath Committee Report:- The observations in Para 2.17.1 (pg:30) of the Report indicates that the inherent powers of the High Courts under Section 482 of CrPC connote the residuary powers of such Courts to do justice. The Report said: **There is no good reason to deny inherent powers to the other subordinate criminal courts** (*emphasis added*). The Report recommended: “Every Court shall have inherent power to make such orders as may be necessary to discover truth or to give effect to any order under this Code or to prevent abuse of

²⁴ Law Commission, Reform of Judicial Administration (Law Com 14) part II, pp 828-830 <lawcommissionofindia.nic.in/1-50/report14vol2.pdf> accessed 21 March 2018.

the process of court or otherwise to secure the ends of justice.”²⁵

(c) Report of 141st Law Commission:- As per the Report, “The inherent powers, thus, recognised (under Section 561-A), empowers the court, *inter alia*, to prevent the abuse of the process not only of High Court but of any Court.”²⁶ The Report recommended amendment of Section 482 to the extent of statutory recognition of this power to all Courts including courts of Magistrates. The Report speaks of conferring (emphasis added) inherent powers by way of amendment but the truth is, neither can the inherent powers be conferred nor does Section 482 (earlier section 561A) CrPC or for that matter Section 151 of CPC purport to confer any such rights. Rather these provisions merely recognise the existing inherent powers of the Court. In relation to Section 151 of CPC, these powers are not conferred upon the court, they are rather inherently possessed by the court; why, then, all the subordinate criminal courts would not have the inherent powers even without their statutory recognition.

8. Conclusion

The first level of court system in India, i.e., the primary structure of the subordinate judiciary, consists of two streams- Civil & Criminal. These two faculties/streams/branches are manned by Civil Judges and Judicial Magistrates, respectively.

Law recognises, grants and saves the inherent powers of the Civil Judge, which is the lowermost Judge in the structure of civil adjudication in terms of jurisdiction as well as seniority/experience. It is the first filing Court for the minimum pecuniary jurisdiction and anyone who qualifies to be a Judge at this level is placed as Civil Judge or as a Judicial Magistrate in his/her first posting. So the junior-most Civil Judge has inherent powers as under Section 151 of Civil Procedure Code. But another officer of the same qualification and seniority

²⁵ Committee on Reforms of Criminal Justice System, (report, vol I) 266 <https://mha.gov.in/sites/upload_files/mha/files/pdf/criminal_justice_system.pdf> accessed 21 March 2018.

²⁶ Ministry of Home Affairs, Need For Amending The Law As Regards Power of Courts To Restore Criminal Revisional Applications and Criminal cases Dismissed For Default in Appearance (Law com 141, 1991) 15<lawcommissionofindia.nic.in/101-169/report141.pdf> accessed 12 February 2018.

who is placed as a Judicial Magistrate does not have any inherent powers as per Section 482 CrPC. Even the Sessions Judge or Assistant Sessions Judge or Additional Sessions Judge or Chief Sessions Judge of a District, who are entrusted with trial and adjudication of offences punishable by death sentence are also not having any inherent powers as under Section 482 CrPC. Thus, the argument that inherent powers are not granted to subordinate Criminal Courts as it entails lot of maturity to handle also stands no ground.

Moreover, just as in case of bail matters and death sentences every single order of a subordinate Criminal Court is open to scrutiny of the higher and the highest Court of the land and orders passed by virtue of inherent powers will be no different. And if gravity of the matter concerned is the issue, the law maker can very well demarcate the areas and matters of lesser gravity where such powers can be exercised by the Magistrates and the areas where they can be exercised by the Sessions Judge.

It is real hardship for the common litigant to travel all the way to a High Court for remedy in the case of a minor mistake such as issuing process. In a study, it has been found that geographical proximity of the litigant with the court is a significant factor in deciding whether he can actually avail of the remedy or not.²⁷ This study, interestingly, reveals that there is proportionately increased likelihood of a litigant availing a remedy if it is available at a geographically nearer place. And to make the population of more than 1.3 billion to approach 24 High Courts raises obvious accessibility issues and the process involves lot of man hours and expenses also which in turn makes it an economically expensive exercise as well.

²⁷ Nick Robinson, The Indian Supreme Court in numbers (Azim Premji University LGDI Working Paper 2012-2013), <<http://azimpremjiuniversity.edu.in/Pages/PageNotFoundError.aspx?requestUrl=http://azimpremjiuniversity.edu.in/sitepages/pdf/LGDI%20Workingpapers%2014December2012%20The%20Indian-Supreme-Court-by-the-Numbers%20NickRobinson.pdf>> accessed 12 March 2018; See also Nick Robinson, Quantitative Analysis of Indian Supreme Court's Workload, (2013) 10(3) Journal of Empirical Legal Studies 573-601.