

A CASE STUDY ON POWERS OF HIGH COURT

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ABSTRACT :

It is to unravel this mystery of jurisprudence caused by the operation of the concept of inherent powers this research work gives emphasis. Its significance is all the more relevant when the power is exercised in the administration of criminal justice. Application or nonapplication of inherent powers in a given case would tell upon the maturity and perfection of the standard of justice. The adjective law or procedural law defines the power and jurisdiction of Courts. The positive law or substantive law defines the equations of human relations. Disturbances in the equation are set right through courts. This is the core of the judicial process. There shall be no hiatus to this process. Justice shall be administered by the courts unhindered by any clog, untainted by any vice, or unpolluted by anything malignant. In the earlier periods when there were no courts and no laws justice was administered, man's intuitive sense guided it. It was conscientious and commonsensical. In the modern period enacted laws came into being, and courts came into existence. Man's position improved. Administration of justice has become efficacious. But the 8. Ref. supra. n. 1 5 system could not attain any rounded perfection. Not a piece of legislation is exhaustive. Intuition, commonsense, character, erudition, and all positive human qualities matter considerably. It is here that one is reminded of inherent powers. Any

probability for miscarriage of justice must be minimised. Justice B.N. Cardozo, considering the pivotal role of the Court and Judges, makes the pertinent observation.

KEY WORDS : procedural law, substansive law , criminal justice, inherent powers, high courts

OBJECTIVES :

1. To know about the powers of the high court in criminal cases
2. To study about the high courts act of 1961
3. To know about the history of the powers of the high court
4. To study about the amendment in the powers of the high court
5. To compare the powers of the high court with the other courts

HYPOTHESIS :

H0: The inherent powers of the high court are not fairly wide to serve the ends of the justice

Ha: The inherent powers of the high court are fairly wide to serve the ends of the justice

RESEARCH METHODOLOGY:

The methodology adopted by the researcher for conducting the proposed research is Doctrinal Research Method.

RESEARCH QUESTION :

Whether high court can exercise its power beyond its jurisdiction ?

P: Whether high courts were able to render justice in a given case even if the illegality was apparent ?

I: Whether it intervenes the criminal jurisprudence in jurisdiction and the malicious influences ?

C: Comparing the powers of the high courts with other appellate authorities

O: sec.482 of crpc is peculiar in criminal jurisprudence

INTRODUCTION :

A Single Judge of the Madras High Court as of late, in ¹K. Raghupathy v The Commissioner of Police [CrI.O.P. SR.No. 28352 of 2017] on 10.07.17, held that an appeal to under Section 482 of the Criminal Procedure Code ("CrPC" or the "Code") for a bearing to the police to enlist a FIR is viable, without debilitating the substitute gave in the Code. The Petitioner in the aforementioned case, drew closer the Hon'ble High Court looking for a bearing to the Police to enlist a FIR on the grievance documented by the Petitioner on 13.06.17. The Registry communicated questions over the practicality of the present appeal to in light of another request go by a Single Judge of the Madras High Court in ²Sugesan Transport Pvt. Ltd v the Assistant Commissioner of Police [2016 5 CT 577], wherein it was held that such a bearing can't be passed under area 482 of the Code, till the Petitioner depletes all the elective cures as gave in the code. Section 482 CrPC is the characteristic energy of the High Court concerning criminal procedures and is imitated underneath

"Sparing of inborn forces of High Court. Nothing in this Code might be considered to utmost or influence the intrinsic forces of the High Court to make such requests as might be important to offer impact to any request under this Code, or to avert manhandle of the procedure of any Court or generally to secure the closures of justice."

Observations in K Raghupathy

The Hon'ble High Court in the K. Raghupathy, watched that Section 482 CrPC, starts with a non-obstante condition and in perspective of the intrinsic power in that, there can't be an aggregate ban on the High Court's "endless ward". Basically, this implies the accessibility of a substitute cure under the Code, can't disallow the High Court to practice its inborn energy to secure the finishes of justice, particularly in light of a non-obstante provision.

The Learned Single Judge, predominantly depended on standards articulated in two instances of the Supreme Court namely, ³Ramesh Kumari v State (N.CT. of Delhi): [2006 1 CTC 666] and ⁴Prabhu Chawla v State of Rajasthan : [CDJ 2016 SC 810].

¹ [CrI.O.P. SR.No. 28352 of 2017]

² [2016 5 CT 577]

³ [2006 1 CTC 666]

⁴ [CDJ 2016 SC 810].

The Apex Court in *Ramesh Kumari*, set out that a ground of elective cure would be no substitute in law to avoid enlisting a situation when a dissension of a cognizable offense is accounted for to a cop. Thus, a Three Judge Bench of the Supreme Court in *Prabhu Chawla's* case held that despite the fact that a cure under Section 397 CrPC exists i.e. revisionary forces of the sessions Court/High Court, it won't obscure the inborn forces of the High Court under Section 482 CrPC i.e. there can't be an aggregate bar on the activity of the intrinsic forces where the "mishandle of procedure of the Court, or other additional customary circumstance energizes the court's ward".

On the quality of the above cases, the court in *K. Raghupathy* held that presence of elective cure not the slightest bit will compress the energy of the High Court under Section 482 CrPC.

Examination of the previously mentioned case:

At the start, according to the Code, there is a procedural instrument recommended under the CrPC as a cure accessible to a man who has a grievance that his objection isn't being enrolled by the police under Section 154(1) CrPC. Right off the bat, he may approach the Superintendent of Police under Section 154(3) CrPC. In the event that the Station House Officer and additionally the Superintendent of Police, both decline to enroll a FIR, he may under Section 156(3) CrPC, document an application to the concerned Magistrate and profit of his second substitute cure. The previously mentioned choice of the Madras High Court has in fact brought intriguing focuses up in law, every last one of them requiring a cautious investigation. The examination of every one of the standards developed by the Madras High Court in *K Raghupathy* is as per the following:

1.Principle of Exhaustion of Alternate Remedies previously conjuring Section 482 CrPC

To the extent the viability of a Petition under Section 482 CrPC, for a heading to the Police to enroll a FIR on the protest given by a gathering without the gathering depleting the substitute cures of the Code is concerned, the suggestion has just been settled by Supreme Court if there should arise an occurrence of *Sakiri Vasu v. Territory of Uttar Pradesh* [2008 2 SCC 409].

The judgment in *Sakiri Vasu*, in Para 26, has plainly laid the accompanying

"In the event that a man has a grievance that his FIR has not been enrolled by the police headquarters his first cure is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or on the other hand other cop alluded to in Section 36 Cr.P.C. On the off chance that in spite of moving toward the Superintendent of Police or the officer alluded to in Section 36 his grievance still holds on, at that point he can approach a Magistrate under Section 156(3) Cr.P.C. rather than hurrying to the High Court by method for a writ request of or an appeal to under Section 482 Cr.P.C. Besides he has a further cure of recording a criminal protestation under Section 200 Cr.P.C. Why at that point should writ petitions or Section 482 petitions be engaged when there are such huge numbers of elective cures?"

Further, the Supreme Court in *Sakiri Vasu*, depending on the Doctrine of Implied Power, even cleared up the extent of the energy of a Magistrate under Section 156(3) CrPC as for coordinating enlistment of a FIR, in the accompanying words-

"In perspective of the previously mentioned lawful position, we are of the view that despite the fact that Section 156(3) is quickly worded, there is an inferred control in the Magistrate under Section 156(3) Cr.P.C. to arrange enlistment of a criminal offense and/or to coordinate the officer accountable for the concerned police headquarters to hold an appropriate examination and make all such essential strides that might be important for guaranteeing a legitimate examination including checking the same. Despite the fact that these forces have not been explicitly said in Section 156(3) Cr.P.C., we are of the sentiment that they are suggested in the above arrangement."

Also, the Supreme Court in various judgements has held that the characteristic energy of the High Court, under Section 482 CrPC, should not to be summoned where there is a particular arrangement in the statute to change the grievance of the wronged party. This statutory power must be practiced sparingly with carefulness and in the rarest of uncommon cases.

⁵*Madhu Limaye v. Province of Maharashtra: 1978CriLJ165* and *Raj Kapoor v. State, Kurukshetra University and Anr. v. Province of Haryana*

It is expressed that despite the fact that nearness of exchange cure does not put a flat out ban on an appeal to under Section 482 CrPC, it is a similarly all around settled standard, that Courts should practice poise in such cases and the same should have been considered by the Madras High Court in the present case.

⁵ 1978CriLJ165

II. Blurring the qualification between interchange cure and procedural system

While alluding to the judgment in Prabhu Chawla's case to hold that the accessibility of a substitute cure can't be a bar to the intrinsic forces of the High Court under Section 482 CrPC, the Madras High Court neglected to consider that Prabhu Chawla's case related to an exchange in regards to an other substantive cure accessible under Section 397 CrPC while talking about the inalienable forces accessible under Section 482 CrPC. In the said judgment, the Court held that a substantive cure accessible under Section 397 CrPC against a legal request go by a criminal court can't be a bar on moving toward the High Court under Section 482 CrPC. Be that as it may, the said proportion can't be utilized to set at nothing a procedural component endorsed by the Code. By depending on Prabhu Chawla, the Madras High Court has rendered the component recommended under Section 154 (3) and 156 (3) slothful and given an entire pass by to the statutory plan endorsed under the CrPC. Besides, even while depending on Ramesh Kumari's case, the Court neglected to consider the certainties in the said case which demonstrate that the Petitioner in the said case had just moved toward the Station House Officer and the Commissioner of Police for recording of a grievance under the watchful eye of moving toward the High Court.

The High Court is vested with broad powers, for example, most astounding court of request in concerned state, defender of crucial rights (FRs) of nationals or energy to understanding of the constitution. Additionally High Court has supervisory and warning controls over lower courts or council in concerned state.

Unique Jurisdiction

- The High Court has unique or restrictive locale (i.e. to hear in first position) in issues that are as per the following –
- Matters of office of the chief naval officer, will, marriage, separate, organization laws and scorn of court.
- Any decision debate in connection to Parliament and State assembly;
- Disputes in connection to income matters;
- Enforcement of FRs of subjects;
- Any matter in connection to understanding of constitution pending in bring down courts;

The four high courts (Delhi, Bombay, Calcutta and Madras) have unique common purview in instances of higher esteem.

- Till 1973, 3 high courts (Calcutta, Bombay and Madras) had unique criminal purview however nullified by CrPC, 1973.

Writ Jurisdiction

- The Writ Jurisdiction of High Court is given under Article 32 of the Constitution. The sacred writs, for example, Habeas Corpus, Mandamus, Prohibition, Quo Warranto or Certiorari are instruments for authorization of Fundamental Rights and for some other reason.
- "Any other reason" incorporates any standard legitimate right of a subject. So High Court can issue writs to any individual, specialist and govt for requirement of a customary right of a native. This energy to issue writ isn't restricted to state where seat of High Court dwells however can stretch out to other state or domain if reason for activity emerges in its regional purview.
- The oppressed gathering in connection to issues of FRs can straightforwardly way to deal with High Court and SC. So High Court has more extensive writ ward in connection to SC (as SC can issue writ just for implementation of FRs and not for any conventional lawful right

CONCLUSION :

While the settled position of law expresses that the power under Section 482 CrPC can't be turned to if there is a particular arrangement in the CrPC for the redressal of grievance of the oppressed party, the Madras High Court has given a order under Section 154/156 CrPC and given a higher platform to the inalienable powers under Section 482 CrPC.

It should be recollected that power under Section 482 CrPC, can be practiced just to "secure the closures of justice" and to keep "the mishandle of the procedure of court". In any case, such expressiveness does not present boundless and discretionary power on the High Court. The High Court should not to have by-passed the method endorsed in the CrPC in the wake of natural forces of the Court, which regardless must be sparingly worked out. Found in light this, it will enthusiasm to see the quantity of cases that end up straightforwardly under the steady gaze of the High Court for enlistment of a FIR and whether the Supreme Court sets right the deformities in the Madras High Court's judgment.

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