2023 STPL(WEB) 13 HP
HIGH COURT OF HIMACHAL PRADESH

(HON'BLE MR. JUSTICE VIRENDER SINGH, J.)

RAKESH AWASTHI

Petitioner

VERSUS

RITESH SHARMA

Respondent

Cr. MMO No. 591 of 2023-Decided on 13.7.2023

Dish of Chq, Cr PC

Negotiable Instrument Act, 1881 – Section 138 – Code of Criminal Procedure, 1974 – Section 482 - Quashing of Conviction – Appeal, Revision, SLP Failed – Maintainability of petition – Question that after the dismissal of the application, under Section 5 of the Limitation Act and after dismissal of the SLP by the Hon'ble Supreme Court, the material question, which arises for determination by this Court is, whether this Court, can entertain the present petition?

Conviction in complaint of dishonour of cheque – Appeal, Revision and even SLP in Supreme Court dismissed – Plea for compounding and setting aside of conviction and sentence – Held: By way of the present petition, the accused want to reopen the judgment of conviction and order of sentence, which has attained finality. Accepting the prayer, at this stage, would amount to nullify the judgment of conviction and order of sentence, which has attained finality. Powers under Section 482 of Cr. P.C. do not warrant or mandate this Court to reopen the matter. Judging the facts and circumstances of the present case, this Court is of the view that the present petition is not maintainable before this Court. Petition dismissed.

(Para 18, 21, 27)

Advocate(s): For the petitioner : Mr. Govind Korla, Advocate.
For the respondent : Nemo

JUDGMENT

Virender Singh, Judge (oral)-Petitioner Rakesh Awasthi has filed the present petition, under Section 482 of the Code of Criminal Procedure, (hereinafter referred to as 'the Cr.P.C.") read with Section 147 of the Negotiable Instruments Act, 1881, (hereinafter referred to as 'the N.I. Act') for following reliefs:

> "(I) To order compounding of the offence allegedly committed by the petitioner under Section 138 of the Negotiable Instruments Act.
>
> (II) While exercising power under Section 482 of the Code of Criminal Procedure, order setting aside of the judgment dated 9.11.2016 passed by learned Additional Sessions JudgeIII, Kangra at Dharamshala camp at Palampur, District Kangra, Himachal Pradesh in Cr. Appeal No. 158P/ X/2013/11 as also judgment of conviction and order of sentence dated 14/15.11.2011 passed by earned Judicial Magistrate First Class, Court No. 1, Palampur, District Kangra, Himachal Pradesh in Cr. Complaint No. 190III/ 2010 and thereafter acquit the accused.

(III) To set aside the order dated 16.5.2023 passed by learned Additional Chief Judicial Magistrate Palampur, District Kangra, in Cr. Complaint No. 190III/ 2010, whereby nonbailable warrants has been issued against the petitioner."

2. For the sake of convenience, the parties to the present petition, hereinafter, are referred to, in the same manner, in which, they were referred to, by the learned trial Court.

3. The complainant has filed a complaint before the Court of learned Judicial Magistrate First Class, Court No. 1, Palampur, District Kangra (hereinafter referred to as 'the trial Court') under Section 138 of the N.I. Act., against the accused on the basis of the fact that the accused had engaged the complainant as Medical Officer in DTIL Hospital, Baijnath, on monthly salary of Rs. 15,000/. Accused, in discharge of his liability, had issued a post dated cheque No. 309933, dated 12.4.2010, for a sum of Rs. 45,000/, drawn on Punjab National Bank, Baijnath. While handing over the cheque to the complainant, accused had assured that whenever, the same is presented to the Bank, the same will be honoured/encashed.

4. Consequently, the complainant presented the said cheque to the Bank of the accused, through his banker, i.e. State Bank of India, Palampur, for encashment, however, the banker of the accused dishonoured the cheque, vide memo, dated 13.4.2010. Thereafter, in compliance to the statutory provisions of the N.I. Act, statutory notice was issued, which was duly received, but, despite receipt of the notice, payment of the cheque amount had not been made by the accused.

5. Upon this, the learned trial Court, primafacie, found a case against the accused, as such, the accused was summoned and notice of accusation was put to him, to which, he has pleaded not guilty and claimed trial. Consequently, the complainant was directed to lead evidence.

6. After evidence of the complainant was adduced, statement of the accused was recorded under Section 313 Cr. P.C. Learned trial Court, after hearing learned counsel for the complainant as well as accused, has convicted the accused, for the commission of offence, punishable under Sections 138 of the N.I. Act, and sentenced him to undergo simple imprisonment, for a period of six months. In addition to this, he has further been directed to pay a compensation amount of Rs. 55,000/to the complainant.

7. The said judgment of conviction and order of sentence has been assailed by the accused, before the learned Additional Sessions JudgeIII, Kangra at Dharamshala, Camp at Palampur, (hereinafter referred to as 'the First Appellate Court'), by way of Cr. RBT Appeal No. 158P/ X/2013/11. However, the said appeal has also been dismissed by the learned First Appellate Court, vide judgment dated 9.11.2016.

8. Against the dismissal of the appeal, the accused approached this Court by filing Criminal Miscellaneous Petition (Main) No. 1773 of 2021 in Cr.MPST No. 4152 of 2021. Since, the petition was filed after the prescribed period of limitation, as such, an application under Section 5 of the Limitation Act has been filed for condonation of delay of 1586 days in filing the present Revision petition. The application was dismissed by this Court on 5.1.2022.

9. The said order has unsuccessfully been assailed before the Hon'ble Supreme Court, by way of Special Leave to Appeal (Crl.) No. (s) 6729/2022. The said SLP was dismissed on 17.10.2022.

10. Now, by way of present petition, the complainant has sought the reliefs, as mentioned above.

11. The complainant had filed the complaint, under Section 138 of the N.I. Act, against the accused. The object of Section 138 of the N.I. Act has elaborately been described by the Hon'ble Supreme Court in Electronics Trade & Technology Development Corpn. Ltd, Secunderabad versus Indian Technologists &

Engineers (Electronics) (P) Ltd. & another, reported in (1996) 2 Supreme Court Cases 743, para 6 of which is reproduced as under:

> "Shri Nageswara Rao, learned counsel appearing for the respondents, contended that stoppage of payment due to instructions does not amount to an offence under Section 138 and that, therefore, the ingredients in Section 138 have not been satisfied. We find no force in the contention. The object of bringing Section 138 on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Despite civil remedy, Section 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it. Section 338 draws presumption that one commits the offence if he issues the cheque dishonestly. It is seen that once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the Bank for nonpayment and the cheque is returned to the payee with such an endorsement, it amounts to dishonour of cheque and it comes within the meaning of Section 138. Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the Bank for payment and when it is returned on instructions, Section 138 does not get attracted. Under these circumstances, since the accused has not made the payment within 15 days from the date of the receipt of the notice issued by the payee or the holder in due course, the dishonest intention is inferable from those facts. Accordingly, the ingredients as contained in Section 138 have been prima facie made out in the complaint. The High Court, therefore, was wholly incorrect in its conclusion that the ingredients have not been made out in the complaint. The orders of the High Court quashing the complaints are illegal. They are accordingly set aside and the trial Court is directed to disposed of the matters as expeditiously as possible. It is made clear that we do not intend to express any opinion on merits.

12. The perusal of the documents, annexed with the petition shows that the accused, after being convicted, for the offence, punishable under Section138 of the N.I. Act, has assailed the aforesaid judgment of conviction and order of sentence, before the learned First Appellate Court. The said appeal has been dismissed on 9.11.2016.

13. The learned First Appellate Court has specifically directed the accused to appear before the learned trial Court on 3.3.2017 at 10:00 a.m. sharp to serve the sentence. Meaning thereby, almost a period of four months had been granted by the learned First Appellate Court to surrender before the trial Court, to serve the substantive sentence. The accused has kept silent for about four years. Thereafter, on one fine morning, he approached this Court with a prayer to condone the delay, in filing the revision petition.

14. Instead of surrendering before the learned trial Court, the accused has knocked the door of this Court, by way of criminal revision petition, which was barred by 1586 days. Delay in filing the revision petition has been sought to be condoned on the ground that he received nonbailable warrants and then, he came to know about the dismissal of his appeal, by the learned First Appellate Court. His application under Section 5 of the Limitation Act has been dismissed by this Court and the following order was passed on 5.1.2022 :

> "Having heard learned counsel for the applicant and after perusing the averments made in the application, as this Court is not convinced that the submissions made therein are worth merit and as this Court is not convinced that delay in filing the Revision Petition is bonafide, accordingly, this application is dismissed so is the fate of Revision Petition. On the Administrative side, learned Additional Chief Judicial Magistrate, Palampur, District Kangra, H.P. is directed to hold

an inquiry with regard to non execution of non bailable warrants which were issued to petitioner in the present proceedings and also with regard to nonissuance of nonbailable warrants for certain dates as is borne out from the report dated 28.12.2021 and take appropriate action against the erring Officers/Officials by way of initiation of disciplinary proceedings, if necessary."

15. As per the provisions contained in the Cr. P.C. whenever, a person appears, surrenders or brought before the Court, in pursuance of summoning order, the Court may release the said person, on bail, subject to his furnishing, bail bonds, to the satisfaction of the trial Court.

16. Admittedly, the accused had furnished the bail bonds to the satisfaction of the learned trial Court by giving an undertaking to appear before the Court, as and when directed. After the trial, when, he has been convicted, the substantive sentence has been suspended by the learned trial Court by exercising powers under Section 389 of the Cr. P.C. Thereafter, when his appeal was ultimately dismissed on 9.11.2016, the learned first Appellate Court had given time to the applicant to surrender before the learned trial Court on 3.3.2017. The First Appellate Court has not suspended the sentence, but given reasonable time to the accused to surrender before the Court on 3.3.2017, to serve the substantive sentence. There is nothing on the record to show that the accused had made any effort to make the payment of cheque to complainant or to make an attempt to compound the offence, as per Section 147 of the N.I. Act.

17. As referred above, thereafter, the accused has filed the revision petition before this Court alongwith an application for condonation of delay, which has ultimately been dismissed on 5.1.2022, whereafter this order has been assailed before the Hon'ble Supreme Court, by way of Special Leave to Appeal, which was ultimately dismissed on 12.10.2022. The order passed by the Hon'ble Supreme Court is reproduced as under:

"We are not inclined to interfere with the impugned order. The Special Leave Petition is, accordingly, dismissed. Pending applications stand disposed of."

18. After the dismissal of the application, under Section 5 of the Limitation Act and after dismissal of the SLP by the Hon'ble Supreme Court, the material question, which arises for determination by this Court is, whether this Court, can entertain the present petition?

19. The Hon'ble Supreme Court in case titled as, 'Damodar S. Prabhu versus Sayed BabaLal, reported in 2015(5) SCC 663, has elaborately discussed the provisions of Sections 138 and 147 of the N.I. Act and laid certain guidelines. Para21 of the judgment is reproduced as under:

"With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at

the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount." (Self emphasis supplied)

20. The accused, in this case, has done nothing, as per the judgment of Damodar S. Prabhu (supra). The judgment of conviction and order of sentence has attained the finality, with the dismissal of S.L.P. by the Hon'ble Supreme Court. Compounding, no doubt, can be permitted, at any stage of proceedings, but, with the dismissal of SLP, no proceedings are now pending. A line has to be drawn, where, the compounding of the offence, could be permitted.

21. By way of the present petition, the accused want to reopen the judgment of conviction and order of sentence, which has attained finality. Accepting the prayer, at this stage, would amount to nullify the judgment of conviction and order of sentence, which has attained finality. Powers under Section 482 of Cr. P.C. do not warrant or mandate this Court to reopen the matter.

22. Accepting the prayer, at this stage, also amounts to giving premium to the accused for his act of omission/commission. The accused has waited till the finality of judgment of conviction and order of sentence against him and then finding, no alternative, the present petition, for the relief(s), as mentioned above, has been filed with "impunity".

23. Accepting the prayer, as made in the petition, under Section 482 Cr. P.C. will encourage the clever person to stretch the litigation upto the top level, i.e. before Hon'ble Supreme Court and when such person does not get the favourable order, then, by filing the application for compounding is nothing but, a futile attempt to rewrite the judgment of conviction and order of sentence, which certainly would shake the confidence of the litigants in the judicial system.

24. The powers under Section 482 Cr. P.C. are to be used with great caution. Under the garb of these powers, the other mandatory powers of Cr. P.C. i.e. 362 Cr. P.C. cannot be bypassed. The powers of Section 362 of Cr. P.C. are reproduced as under:

> "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."

25. Accepting the prayer, in this case, this Court cannot violate the mandate of Section 362 of Cr. P.C., as the prayer does not fall in the purview of "to correct a clerical or arithmetical error".

26. The Hon'ble Supreme Court in State of Punjab versus Devinder Pal Singh Bhullar and others, reported in (2011) 14 Supreme Court Cases 770, has held that there is bar to review/alter the judgment passed by the Court. Relevant paragraphs 44 to 64 of the said judgment are reproduced as under:

> "44. There is no power of review with the Criminal Court after judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Cr.P.C. is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (See: Hari Singh Mann v. Harbhajan Singh Bajwa & Ors., AIR 2001 SC 43; and Chhanni v. State of U.P.,)
>
> 45. Moreover, the prohibition contained in Section 362 Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C. has no authority or jurisdiction to alter/review the same. (See: Moti Lal v. State of M.P., AIR 1994 SC 1544; Hari Singh Mann (supra); and State of Kerala vs. M.M. Manikantan Nair).
>
> 46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. (Vide: Chitawan & Ors. v. Mahboob Ilahi, Deepak Thanwardas Balwani v. State of Maharashtra & Anr. Swarth Mahto A n & r. v. Dharmdeo Narain Singh, Makkapati Nagaswara Sastri v. S.S. Satyanarayan, Asit Kumar Kar v. State of West Bengal & Ors., Vishnu Agarwal v. State of U.P. & Anr.
>
> 47. This Court by virtue of Article 137 of the Constitution has been invested with an express power to review any judgment in Criminal Law and while no such power has been conferred on the High Court, inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code itself. (Vide: State Represented by D.S.P., S.B.C.I.D., Chennai v. K.V. Rajendran & Ors.
>
> 48. In Smt. Sooraj Devi v. Pyare Lal & Anr., AIR 1981 SC 736, this Court held that the prohibition in Section 362 Cr.P.C. against the Court altering or reviewing its judgment, is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 Cr.P.C and, therefore, the attempt to invoke that power can be of no avail.
>
> 49. Thus, the law on the issue can be summarised to the effect that the criminal justice delivery system does not clothe the court to add or delete any words, except to correct the clerical or arithmetical error as specifically been provided under the statute itself after pronouncement of the judgment as the Judge becomes functus officio. Any mistake or glaring omission is left to be

corrected only by the appropriate forum in accordance with law. IV. INHERENT POWERS UNDER SECTION 482 Cr.P.C.

50. “3…...The inherent power under Section 482 Cr.P.C. is intended to prevent the abuse of the process of the Court and to secure the ends of justice. Such power cannot be exercised to do something which is expressly barred under the Cr.P.C. If any consideration of the facts by way of review is not permissible under the Cr.P.C. and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there are no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362 Cr.P.C. (emphasis supplied)

51. The inherent power of the court under Section 482 Cr.P.C. is saved only where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court, amounts to abuse of the process of court. Therefore, such powers can be exercised by the High Court in relation to a matter pending before a criminal court or where a power is exercised by the court under the Cr.P.C. Inherent powers cannot be exercised assuming that the statute conferred an unfettered and arbitrary jurisdiction, nor can the High Court act at its whim or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. (Vide: Kurukshetra University & Anr. v. State of Haryana & Anr., AIR 1977 SC 2229; and State of W.B. & Ors. v. Sujit Kumar Rana, (2004) 4 SCC 129).

52. The power under Section 482 Cr.P.C. cannot be resorted to if there is a specific provision in the Cr.P.C. for the redressal of the grievance of the aggrieved party or where alternative remedy is available. Such powers cannot be exercised as against the express bar of the law and engrafted in any other provision of the Cr.P.C. Such powers can be exercised to secure the ends of justice and to prevent the abuse of the process of court. However, such expressions do not confer unlimited/unfettered jurisdiction on the High Court as the "ends of justice" and "abuse of the process of the court" have to be dealt with in accordance with law including the procedural law and not otherwise. Such powers can be exercised ex debito justitiae to do real and substantial justice as the courts have been conferred such inherent jurisdiction, in absence of any express provision, as inherent in their constitution, or such powers as are necessary to do the right and to undo a wrong in course of administration of justice as provided in the legal maxim "quando lex aliquid alique, concedit, conceditur et id sine quo res ipsa esse non potest". However, the High Court has not been given nor does it possess any inherent power to make any order, which in the opinion of the court, could be in the interest of justice as the statutory provision is not intended to bypass the procedure prescribed. (Vide: Lalit Mohan Mondal & Ors. v. Benoyendra Nath Chatterjee, AIR 1982 SC 785; Rameshchandra Nandlal Parikh v. State of Gujarat & Anr., AIR 2006 SC 915; Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS & Anr., AIR 2006 SC 2872; Inder Mohan Goswami & Anr. v. State of Uttaranchal & Ors., AIR 2008 SC 251; and Pankaj Kumar v. State of Maharashtra & Ors., AIR 2008 SC 3077).

53. The High Court can always issue appropriate direction in exercise of its power under Article 226 of the Constitution at the behest of an aggrieved person, if the court is convinced that the power of investigation has been exercised by an Investigating Officer malafide or the matter is not investigated at all. Even in such a case, the High Court cannot direct the police as to how the

investigation is to be conducted but can insist only for the observance of process as provided for in the Cr.P.C. Another remedy available to such an aggrieved person may be to file a complaint under Section 200 Cr.P.C. and the court concerned will proceed as provided in Chapter XV of the Cr.P.C. (See: Gangadhar Janardan Mhatre v. State of Maharashtra & Ors., (2004) 7 SCC 768; and Divine Retreat Centre v. State of Kerala & Ors., AIR 2008 SC 1614).

54. The provisions of Section 482 Cr.P.C. closely resemble Section 151 of Code of Civil Procedure, 1908, (hereinafter called the 'CPC'), and, therefore, the restrictions which are there to use the inherent powers under Section 151 CPC are applicable in exercise of powers under Section 482 Cr.P.C. and one such restriction is that there exists no other provision of law by which the party aggrieved could have sought relief. (Vide: The Janata Dal v. H.S. Chowdhary & Ors., AIR 1993 SC 892).

55. In Divisional Forest Officer & Anr. v. G.V. Sudhakar Rao & Ors., AIR 1986 SC 328, this Court held that High Court was not competent under Section 482 Cr.P.C. to stay the operation of an order of confiscation under Section 44(IIA) of the Andhra Pradesh Forest Act as it is distinct from a trial before a court for the commission of an offence.

56. In Popular Muthiah v. State represented by Inspector of Police, (2006) 7 SCC 296, explaining the scope of Section 482 Cr.P.C., this Court held :

"48...The High Court cannot issue directions to investigate the case from a particular angle or by a particular agency." (emphasis added)

Thus, in case, the High Court in exercise of its inherent powers, issues directions contravening the statutory provisions laying down the procedure of investigation, it would be unwarranted in law.

57. In Rajan Kumar Machananda v. State of Karnataka, 1990 (supp.) SCC 132, this Court examined a case as to whether the bar under Section 397(3) Cr.P.C. can be circumvented by invoking inherent jurisdiction under Section 482 Cr.P.C. by the High Court. The Court came to the conclusion that if such a course was permissible it would be possible that every application facing the bar of Section 397(3) Cr.P.C. would be labelled as one under Section 482 Cr.P.C. Thus, the statutory bar cannot be circumvented.

58. This Court has consistently emphasised that judges must enforce laws whatever they may be and decide the cases strictly in accordance with the law. "The laws are not always just and the lights are not always luminous. Nor, again, are judicial methods always adequate to secure justice". But the courts "are bound by the Penal Code and Criminal Procedure Code" by the very `oath' of the office. (See: Joseph Peter v. State of Goa, Daman and Diu, AIR 1977 SC 1812).

59. It is evident from the above that inherent powers can be exercised only to prevent the abuse of the process of the court and to secure the ends of justice. However, powers can be used provided there is no prohibition for passing such an order under the provisions of Cr.P.C . and there is no provision under which the party can seek redressal of its grievance. Under the garb of exercising inherent powers, the Criminal Court cannot review its judgment. Such powers are analogous to the provisions of Section 151 CPC and can be exercised only to do real and substantial justice. (self emphasis supplied).

60. The rule of inherent powers has its source in the maxim "Quadolex aliquid alicui concedit, concedere videtur id sine quo ipsa, ess uon potest" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist. The order

cannot be passed bypassing the procedure prescribed by law. The court in exercise of its power under Section 482 Cr.P.C. cannot direct a particular agency to investigate the matter or to investigate a case from a particular angle or by a procedure not prescribed in Cr.P.C. Such powers should be exercised very sparingly to prevent abuse of process of any court. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

61. To inhere means that it forms a necessary part and belongs as an attribute in the nature of things. The High Court under Section 482 Cr.P.C. is crowned with a statutory power to exercise control over the administration of justice in criminal proceedings within its territorial jurisdiction. This is to ensure that proceedings undertaken under the Cr.P.C. are executed to secure the ends of justice. For this, the Legislature has empowered the High Court with an inherent authority which is repository under the Statute. The Legislature therefore clearly intended the existence of such power in the High Court to control proceedings initiated under the Cr.P.C. Conferment of such inherent power might be necessary to prevent the miscarriage of justice and to prevent any form of injustice. However, it is to be understood that it is neither divine nor limitless. It is not to generate unnecessary indulgence. The power is to protect the system of justice from being polluted during the administration of justice under the Code.

62. The High Court can intervene where it finds the abuse of the process of any court which means, that wherever an attempt to secure something by abusing the process is located, the same can be rectified by invoking such power. There has to be a nexus and a direct corelation to any existing proceeding, not foreclosed by any other form under the Code, to the subject matter for which such power is to be exercised.

63. Application under Section 482 Cr.P.C. lies before the High Court against an order passed by the court subordinate to it in a pending case/proceedings. Generally, such powers are used for quashing criminal proceedings in appropriate cases. Such an application does not lie to initiate criminal proceedings or set the criminal law in motion. Inherent jurisdiction can be exercised if the order of the Subordinate Court results in the abuse of the "process" of the court and/or calls for interference to secure the ends of justice. The use of word `process' implies that the proceedings are pending before the Subordinate Court. When reference is made to the phrase "to secure the ends of justice", it is in fact in relation to the order passed by the Subordinate Court and it cannot be understood in a general connotation of the phrase. More so, while entertaining such application the proceedings should be pending in the Subordinate Court. In case it attained finality, the inherent powers cannot be exercised. Party aggrieved may approach the appellate/revisional forum. Inherent jurisdiction can be exercised if injustice done to a party, e.g., a clear mandatory provision of law is overlooked or where different accused in the same case are being treated differently by the Subordinate Court.

64. An inherent power is not an omnibus for opening a pandorabox, that too for issues that are foreign to the main context. The invoking of the power has to be for a purpose that is connected to a proceeding and not for sprouting an altogether new issue. A power cannot exceed its own authority beyond its own creation. It is not that a person is remediless. On the contrary, the constitutional remedy of writs are available. Here, the High Court enjoys wide powers of prerogative writs as compared to that under Section 482 Cr.P.C. To secure the corpus of an individual, remedy by way of habeas corpus is available. For that the High Court should not resort to inherent powers under Section 482 Cr.P.C. as the Legislature has conferred separate powers for the same. Needless to mention that Section 97 Cr.P.C. empowers Magistrates to order the search of a person wrongfully confined. It is something different that the same court exercising authority can, in relation to the same subject matter, invoke its writ jurisdiction as well. Nevertheless, the inherent powers are not to provide universal remedies. The power cannot be and

should not be used to belittle its own existence. One cannot concede anarchy to an inherent power for that was never the wisdom of the Legislature. To confer unbriddled inherent power would itself be trenching upon the authority of the Legislature."

27. Judging the facts and circumstances of the present case, this Court is of the view that the present petition is not maintainable before this Court.

28. The Hon'ble Supreme Court, in a recent decision, while relying upon its earlier decision in Criminal Appeal No. 1852 of 2019, titled as "New India Assurance Co. Ltd. Versus Krishna Kumar Pandey", has carved out the exception where the Court can exercise the powers under Section 482 Cr.P.C., despite the bar of Section 362 Cr. P.C. The relevant para11 of the judgment is reproduced as under:

> "But the above contention of the learned Senior Counsel for the respondent is fallacious for two reasons. The first is that Section 362 of the Code is expressly subjected to "what is otherwise provided by the Code or by any other law for the time being in force."

Though this Court pointed out in Davinder Pal Singh (supra) that the exceptions carved out in Section 362 of the Code would apply only to those provisions where the Court has been expressly authorized either by the Code or by any other law but not to the inherent power of the Court, this Court nevertheless held that the inherent power of the Court under Section 482 Cr.P.C. is saved, where an order has been passed by the criminal Court, which is required to be set aside to secure the ends of justice, or where the proceeding amounts to abuse of the process of Court. In paragraph 46 in particular, this Court held in Davinder Pal Singh as follows:

> "46. If a Judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault."

29. Once, the Court has dismissed the Revision petition, being barred by limitation, then, the Court becomes functusofficio and by way of present petition, the accused wants to reopen the matter, which is not permissible, as the petitioner could not bring his case, within the scope of exception, carved out by Hon'ble Supreme Court, in New India Assurance case (supra).

30. Accordingly, in view of aforesaid discussion and observations, the present petition is not maintainable and the same is accordingly rejected. The pending application(s), if any, are also disposed of.
