PART - IV
AN OVERVIEW OF INHERENT POWERS
CHAPTER - VI

QUESTION OF EVIDENCE IN INVOKING INHERENT POWERS

Inherent powers of the High Court under section 482 of the Code of Criminal Procedure is unique in criminal jurisprudence. It is the most potent weapon for the High Court to clear the province of criminal law jurisdiction of all vitiating and malicious influences. The questions naturally raised in the context are about the scope, extent and limitation of the power. The powers are not available to the subordinate courts for the obvious reason that there will be pandemonium in the criminal justice system. The inherent powers are available only to the High Court for reasons historical, jurisprudential and practical. Still the High Courts have to labour hard to wield the inherent powers without being erratic, slipshod or arbitrary.

i. No Statute to Control Abuse of Powers

The nature of the powers is such that there is no statutory mechanism to check its misuse or abuse. One has only to believe that the High Court like Calphurnia is beyond suspicion. Whatever controls are perceived to be embedded in the decision of the Supreme Court, the Supreme Court itself admits that so far as inherent powers of the High Court are concerned, one has to believe in the goodsense of the judges and the degree of reti-

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2. William Shakespeare Julius Caesar, Calphurnia, the wife of Julius Ceaser is known for her fidelity to her husband.
cense, reserve and restraint practiced by them. The inherent pow-
ers of the High Court are preserved by section 482 of the Crimi-
nal Procedure Code. As rightly observed by the Supreme Court:-

"The Power of the High Court, therefore is very wide. How-
ever, the High Court must exercise such power sparingly
and cautiously. When the High Court notices that there
has been a failure of justice or misuse of judicial mecha-
nism or procedure, sentence or order is not correct, it is
but the salutory duty of the High Court to prevent the abuse
of the process or miscarriage of justice."

ii. Limits of Inherent Powers

The powers under section 482 Cr.P.C. are recognised as form-
ing the ground on which the judicial review of criminal matters
rest. Inherent powers are multifaceted as it involves power to
punish for contempt of court, power to do complete and substan-
tial justice, and power to keep the stream of justice pure and clean.
In Supreme Court Bar Association v. Union of India & another,
the Supreme Court has made a long and strong exposition of
inherent powers both of the High Court and the Supreme Court.
The problem is in drawing a boundary for the Supreme Court and
High Court to keep the exercise of this power within the limits of
legality and constitutionality. The Supreme Court can punish an
advocate, for contempt of court or for the contumacious behaviour
in the court, under Article 129 read with 142 of the Constitution.

But, to suspend the licence of the advocate is an excess use of inherent powers because it is the function of the Bar Councils. While reversing the decision of the Supreme Court in *Re V.C. Mishra*\(^6\) the Supreme Court cautioned itself.

"It must be remembered that wider the amplitude of its power under Article 142 the greater the need of care for this Court to see that the power is used with restraint.....\(^7\)

This cautioning is applicable to the High Court in the matter of inherent powers under section 482 of Cr.P.C.

"The power conferred on the High Court under Article 226 and 227 of the Constitution and under Section 482 of Cr.P.C. have no limits. But, more the power more due care and caution is to be exercised while invoking this power"\(^8\).

While invoking inherent powers the High Court does a triple function. It gives effect to orders passed under the Code. It prevents the abuse of the process of the Court, and it secures the ends of justice. Inherent Powers help to keep the prestige and credibility of the judiciary intact and make justice invulnerable to illegal incursions.

The gravity and scope of the powers of the High Court prompts one to think of the possible limitations in applying the inherent powers. section 482 Cr.P.C. proclaims that nothing in the Code shall affect or limit the inherent powers. This does not mean that the High Court can exercise the powers in an uncouth

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manner. There ought to be certain rules of the game, or code of conduct, lest the High Court itself can cause a deadlock in the administration of criminal justice. Indeed there are certain generally accepted and respected factors and forces which play an effective check on the High Court's application of inherent powers. The rules of evidence is one major force which helps High Court to keep its inherent jurisdiction within permissible limits. Then there are principles of law applied as yardsticks to the situations which call for High Court's interference. One such principle is that the High Court does not interfere at a premature stage of the proceedings pending before the subordinate court. This involves interference at the threshold as well as, at the investigation stage. Another principle is that matters which are specially dealt with in the Codes are kept outside the pale of inherent powers. Matters which are specifically included under the Code are made immune to inherent powers.\(^9\) Regarding the question of opportunity to assess and evaluate evidence the same acts as guiding factors in the invocation of inherent powers. The Supreme Court has laid down these principles through decisions and High Courts tackle situation in the light of such decisions. But the prominence of inherent powers even render the above control mechanisms ineffective when demands of justice call for positive interference.

iii. **Rules of Evidence**

Inspite of recognised rules of evidence, the High Courts display discipline as well as deviance in their approaches to situa-

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tions. The core of a situation for applying inherent powers is by examining whether the allegations set out in the complaint or charge constitute any offence. If *prima facie* case is made out regarding the offence alleged the High Court has no use for its inherent powers. If no *prima facie* case is made out the High Court must exercise its inherent powers and quash the Magistrate's order taking cognizance of the offence. It all depends on how one perceives. The perception of the High Court may tally with that of the Magistrate, which need not be concurred by the Supreme Court. The Supreme Court has the last word. In *Dr. Sharda Prasad Sinha v. State of Bihar*\(^{10}\) the charge-sheet was filed alleging offences under sections 54(1) (a) and 57(c) of the Bihar and Orisa Excise Act, 1915. The High Court declined to interfere. In appeal the Supreme Court quashed the proceedings. Thus the impressions of the High Court and the Supreme Court may vary with regard to allegations in the complaint constituting or not constituting any offence. In both cases a decision is taken without the aid of evidence. At all tiers of judiciary the trial courts, the High Court and the Supreme Court what is looked for is the core ingredients of the offence alleged in the complaint in the given context. If the facts *per se* do not disclose an offence the only course available to the High Court is to quash the complaint. The pertinent point is that the forum of the High Court shall not be made use of to agitate hollow grievances. In *Dr. Dhanwanti Vaswani v. State and another*\(^{11}\) the Supreme Court held that the High Court could rightly quash the complaint if the facts of the

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10. 1977 SCC (Cri.) 132.
11. 1991 SCC (Cri) 1040.
case did not disclose the offence, even if taken as correct on its face value. The Supreme Court held that the opinion of the High Court in respect of the 2nd accused was correct and the High Court had rightly quashed the compliant. The above decisions go to show that in cases where there is no scope for evidence, allowing the prosecution to continue is itself an abuse of the process for the court. It does not mean that the High Court can do the function of a trial court. Nor is it the lookout of the High Court to search for materials. In *Radhey Shyam Khenka v. State of Bihar*, the Supreme Court upheld the decision of the High Court. It was held that the High Court cannot usurp jurisdiction of the trial court and conduct a powerful trial. The charge-sheet was filed alleging offences under section 409 IPC. The High Court dismissed the petition. The Supreme Court held that it is not the duty of the High Court to find out whether the accused are likely to be convicted on the basis of the materials collected during the investigation.

While saving the inherent powers of the High Court it is also made clear that the High Court shall not engage in a fishing expedition to find the truth, probability or possibility of the allegations. It is here that the precarious position of the High Court is revealed. Inherent powers are most potent. But, its application requires all the sense and sensibility of a scientist and the resourcefulness of an artist. The power is exercised at the threshold of a proceedings. The court cannot make a 'hit or miss' approach. The court works under a serious handicap. In appellate jurisdiction, it has the entire evidence available before the trial court. It

12. 1993 SCC (Cri) 591
has also the judgment of the trial court. But, while exercising inherent powers the court works without evidence, or without the paraphernalia of a trial. The classical jurisprudence would say that a case is heard and decided. But, that is in trial. Here no judgment is pronounced. Court passes an order. Even if called upon to do so the Supreme Court or the High Court refrain from forming any opinion in a controversy which requires a decision on evidence. Thus while exercising inherent powers there is no determination of facts. Determination of facts is one of the activities necessary for final judicial decisions. Each final judicial decision has a factual basis "The art of the judicial process is in fact an ability to use evidence"13.

According to Albert.S.Osborn, adjudication sans evidence is arbitrary. Law of Evidence is a principal branch of procedural law. This is the significance of application of inherent powers. Osborn suggests that evidence is the medium through which courts of law administers justice.

"It seems strange that the law itself should thus ever be the actual means of hiding the truth and defeating justice, but unfortunately this has been the fact, and much of what is called law reform has consisted in getting what has been the law out of the way so that an investigation could be taken up in a sensible manner, taken into court, and the facts proved. There are many persons who do not seem fully to understand that this opportunity to prove the facts in a court of law is the means by which justice is main-

13. Ref. supra. Introduction, n. 17
tained in civilized communities, and that the progress of civilization is marked by the halting steps by which this proceeding has been made more easy and certain"14

Prof. Goodhart based his studies on doctrine of judicial precedents and ratio decidendi. In his book chapter II deals with "recent tendency in English Jurisprudence". It is as good in Indian jurisprudence also, because, Indian jurisprudence has inherited the legacy of anglo-saxon jurisprudence.

While explaining the recent tendencies in English jurisprudence, Prof. Goodhart talks about the tendencies in criminal law also. Prof. Goodhart explains the logic behind the administration of criminal justice. The question of punishment as well as redressal of the victim are considered. The role played by other social sciences are also referred to. Prof. Goodhart also adverts to procedure and evidence which make administration of criminal justice all the more onerous. The over bearing effect of procedure and evidence is reflected in the following words of Prof: Goodhart.

"Mention must be made, however, of those technical but important subject - procedure and evidence. Fortunately in England the law relating to procedure has been completely overhauled since 1873 and is now on a satisfactory basis, in the United States it is still in hopeless confusion because no scientific attempt at reform has been made. Quack legal remedies are as dangerous as quack medical ones. The law of evidence is of peculiar interests between law in action and law in the books. The principles

of evidence are substantially the same in England and in the United States, but nevertheless they function in an entirely different manner in the two countries. In England, a trial, civil, or criminal, is rapid, orderly, and fair, in the United States it is too frequently intolerably slow, punctuated by brawls between opposing counsels, and uncertain in its results. The law of evidence is in itself the most striking evidence that a legal system depends for its efficiency primarily upon the spirit and character of those who administer it. The best engine may be wrecked by an inefficient engineer"\textsuperscript{15}.

After making the above observations, Prof. Goodhart concedes that at the present time, law is not in a "period of stability and tranquillity". But, the State requires fundamental re-adjustments.

The Supreme Court, and for that matter the High Court, cannot count itself as a court of a Magistrate or a Special Judge to consider whether there is evidence or not sufficient for framing of charge\textsuperscript{16}. Viewed from this angle the jurisdiction of the High Court while exercising the inherent powers under section 482 Cr.P.C. to quash an F.I.R. or a complaint is very limited. It has no jurisdiction to examine the correctness or otherwise of the allegation\textsuperscript{17}. The allegations in the complaint are to be taken at their face value, without adding or substracting anything. Any omis-


\textsuperscript{16} \textit{Supra} n. 9

\textsuperscript{17} J.R.D. Tata, Chairman TI & S.Co. Ltd. v. Payal Kumar, 1987 Cri.L.J. 447 (SC).
sion or gap in the complaints has to be viewed in the light of the evidence\textsuperscript{18}. The court has to consider the failure to mention the stirring of the milk in the complaint by the Food Inspector\textsuperscript{19}.

The proceedings under section 482 Cr.P.C. is not regulated by the rules of evidence normally applied in an adjudicatory process. There is no occasion to dissect and display the facts in issue to find any preponderances of probability or proof beyond reasonable doubt. The High Court is expected to discharge the powers derived from a high-voltage jurisdiction. There is no room for logical analysis of the facts and events. There is no scope for a synthesis of what is and what ought to be. Logic, analysis, juristic 'extraversions' and all other conventional methods of a judge's trade are conspicuous by their absence. The experience of the Judge\textsuperscript{20} the wisdom of law and the living facts discussed by the F.I.R. or complaint combine together and the High Court is to decide whether to be, or not to be\textsuperscript{21}. Whether to invoke the power and quash the proceedings or not to invoke the power and save the proceedings. There is no scope for responding on reflexes. It will be a misadventure at the cost of justice. The cardinal consideration of the High Court would be to see whether the materials before it could disclose any offence. If the averments in the complaint or the F.I.R. or the charge-sheet, if taken at their face value, do not constitute an offence then the High Court is justified in invoking the inherent jurisdiction. But, if the averments

\begin{itemize}
\item \textsuperscript{18} B.M.L. Gary v. U.T. Chandigarh, 1987 Cri.L.J. 507 (P&H)
\item \textsuperscript{19} Ibid.
\item \textsuperscript{20} O.W. Holmes, \textit{The Common Law} : said that Life of law is not logic, it is experience.
\item \textsuperscript{21} William Shakespeare, \textit{Hamlet}, Act III Scene 2 Line 56
\end{itemize}
allege an offence which can be proved on evidence, or for adjudicating the controversy evidence is required, the High Court should be averse to use inherent powers. The sensitive character of the jurisdiction of the High Court under section 482 Cr.P.C. is that once the High Court invokes the power to quash the proceedings, the allegations are removed lock, stock as barrel. The aggrieved party who filed the complaint is deprived of any further opportunity to canvas the correctness of his allegation. All his attempts prove abortive, as the case suffers a sudden death. The Supreme Court's most vociferous grievance about the High Court in the matter of invoking the inherent power in this area.

iv. High Court not to Presume Facts

In a given situation the High Court has no opportunity to ruminate over the facts, to have flights of fancy, to assume to presume, to hypothesise, to conjecture or to imagine them. The High Court is only required to be cool and detached, dispassionate, and disinterested so that what clue is procured from the body of the complaint it takes a decision on it. While doing so, the High Court must keep in mind the social purpose behind every legislation. In the modern period, several social welfare legislations are enacted with provisions for strict liability. The classical requirement of mens rea for fixing the liability is waved. Under such circumstances, if the High Court quashes the proceedings on slender grounds, it causes double jeopardy by killing the case on the one hand and undermining the legislature on the other hand. In State of Punjab v. Devinder Kumar,22 the Supreme Court took exception to the attitude of the High Court in quashing criminal

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22. AIR 1983 SC 545
proceedings in different Magistrate courts.

"Before concluding we should observe that the High Court committed a serious error in these cases in quashing the criminal proceedings in different Magistrate's Courts at a premature stage in exercise of its extra-ordinary jurisdiction under section 482, Criminal Procedure Code. These are not cases where it can be said that there is no legal evidence at all in support of the prosecution. The prosecution has still to lead its evidence. It is neither expedient nor possible to arrive at a conclusion at this stage on the guilt or innocence of the accused on the material before the court. While there is no doubt that the onus of proving the case is on the prosecution, it is equally clear that the prosecution should have sufficient opportunity to adduce all available evidence"23

v. Supreme Court's Disapproval of High Court's Interference at Interlocutory Stage

The Supreme Court has in castigating language disapproved the interference of the High Court at interlocutory stage. There were no cases of that exceptional character where continuation of prosecution would have resulted either in waste of public time and money or in grave prejudice to the accused, concerned. On the other hand, this undue interference by the High Court has been responsible for the prosecution in respect of grave economic offences remaining pending for a long time24.

23. Id. at p. 549.
24. Ibid.
The High Court is to imbibe in itself the intention of the legislature as in a Rule of Law Society the public interest shall not suffer in preference over private interest and social security shall not be preceded by personal safety. Legislations like the Prevention of Food Adulteration Act 1954 is brought into force to check the rampant social evils of adulteration and misbranding, in larger public interest.

"In certain cases, the Act provides for imposition of penalty without proof of a guilty mind. This shows the degree of concern exhibited by Parliament in so far as public is concerned. While construing such food laws, courts should keep in view that the need for prevention of future injury is as important as is actually inflicted. Merely because a person who has actually suffered in his health after consuming adulterated food would not be before court in such cases, courts should not be too eager to quash on slender grounds the prosecutions for offences, alleged to have been committed under the Act"\(^\text{25}\).

Thus evidence is crucial to all proceedings. The High Court cannot anticipate an absence of evidence and then quash the proceedings. In *Dhanalakshmy v. R. Prasannakumar*,\(^\text{26}\) the Supreme Court considered the erroneous attitude of the High Court in exercising the inherent powers. A wife was before the Magistrate court against her husband. In the complaint the offences under sections 494, 496, 498A, 112, 114, 120, 120B, and 34 I.P.C. were alleged. The husband had secretly married another lady while the

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\(^\text{25}\) *Id.* at p. 547.

divorce petition was pending. That lady as well as those con­
nived to solemnise the marriage were all in the party array. The
husband, moved the High Court under section 482 Cr.P.C. The
proceedings for a decree of divorce was still pending. On appli­
cation the High Court proceeded to analyse the case of the com­
plainant in the light of all the probabilities in order to determine
whether a conviction would be sustainable. On such premises the
High Court arrived at the conclusion that the proceedings were to
be quashed against all the respondents. The Supreme Court was
peeved by it. There were specific allegations in the complaint.
The complainant had to substantiate the allegations by leading in
evidence. There was nothing to hold that the complaint was prima­
facie frivolous. On the other hand, the complaint did disclose an
offence. Interference by the High Court under section 482 Cr.P.C.
was not justified. The decision of the High Court was inspite of
principles laid down by the Supreme Court in this context already27.

"Section 482 of the Code of Criminal Procedure empow­
ers the High Court to exercise its inherent powers to pre­
vent abuse of the process of Court. In proceedings insti­
tuted on a complaint an exercise of the inherent powers
to quash the proceedings is called for only in cases where
the complaint does not disclose any offence or is frivo­
lous, vexatious or oppressive. If the allegations set out in
the complaint do not constitute the offence of which cog­
nizance is taken by the Magistrate it is open to the High

27. Ref. supra n. 26. Reference is made in the Judgment to Sharda Prasad Sinha
v. State of Bihar, 1977 SCC (Cri) 132 and Sardar Trilok Singh v. Sathya Deo
Tripathi, (1979) 4 SCC 396; Municipal Corporation of Delhi v. Prurshottam
Court to quash the same in exercise of inherent powers under section 482. It is not however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is malafide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.28

The Supreme Court held that the High Court was clearly in error in assessing the material before it, and concluded that the complaint could not be proceeded with.

The responsibility of the High Court is quite onerous. It has to make a tight rope walking by balancing the interest of the society and interest of the individuals. In a conventional trial the accused as well as the prosecution can have time, space and action to unfold the case in all its detail. Society's interest is respected by convicting the real wrong doer. Individual's interest is protected by acquitting the innocent accused. The case takes its own course. The aggrieved party can go in appeal or revision to the superior court where also a post-mortum of the proceedings in the trial court is conducted. Even if, the appellate court is the High court, it works with appellate power and not debilitated as in the case of deciding a petition under section 482 Cr.P.C. While exercising

inherent powers the High Court has no occasion to see the evidence. The materials before it shall not be so meticulously annotated to arrive at a conclusion. The High Court acts without evidence and at the same time it has to act within law. The decision must be legal, regular and convincing. It does not mean that the High Court should always be disinclined to exercise the inherent powers. But, sometimes, the attitude of the Supreme Court is also enigmatic. At one instance the High Court is indoctrinated with the virtues of trial and undersirability of invoking inherent powers and meticulously examining the records; at the other instances the Supreme Court does the work of the High Court.

In Bhaskar Chattoraj v. State of West Bengal29 the offence alleged was under section 448 I.P.C., ie, of criminal trespass. There were two other accused. The High Court declined to invoke the inherent jurisdiction. The High Court held that on perusal of documents submitted under section 173 of Cr.P.C. it had spelt out a prima-facie case. On the other hand the Supreme Court held the allegation to be very vague. The Court said:

"We carefully and meticulously went through the entire reports as well as the statements of the witnesses recorded during the course of the investigation and on perusal of the records, we are satisfied that there is no material connecting the appellant with the alleged offence of criminal trespass. The learned counsel appearing on behalf of the respondent is not able to satisfy us showing any material that would justify the implication of the appellant with the offence for which he now stands charged.

In our considered opinion, no conviction can be recorded on the mere vague allegations, that too made only in the petition, dated 15-11-1985 and as such the entire proceedings as against this appellant is only an abuse of the process of the Court. In view of the above circumstances, we quash the charge framed as against this appellant under section 448 I.P.C."30

According to the Supreme Court, the High Court had occasion to consider the case of the appellant alone. The others were charged under sections 448 and 380 IPC. The appellant was charged under section 448 IPC only. It was a summons case, others were to be proceeded in a warrant case since section 380 of IPC was included. A separate charge was framed for the appellant. So, the Supreme Court held that it was patent that the appellant could be spared the ordeal of the trial. In this case, the Supreme Court discharged the inherent powers of the High Court. This is inspite of the view of the Supreme Court that it cannot convert itself into a court of the Magistrate or a Special Judge to consider whether there is evidence31. But, in a matter requiring complete justice, the Supreme Court can in a Special Leave Petition under Article 136 invoke the greater jurisdiction under Article 142 of the Constitution. There is no provision similar to Section 482 Cr.P.C. enabling the Supreme Court with inherent powers. But, the provision under Article 136 and 142 are sufficient to invoke "the overbearing jurisdiction of the Supreme Court". To quote a juristic opinion:

30. Id. at p. 318.
31. Supra n. 9.
"Once the court is satisfied that the criminal proceedings amount to abuse of the process of court, it would quash such proceedings to ensure justice. No enactment made by Central or state Legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though while exercising power under Article 142 of the Constitution, the court must take into consideration the Statutory provisions regulating the matter in dispute. What would be the need of complete justice in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the court would take into consideration the express provisions of a substantive statute. Once the court has taken seisin of a case, cause or matter, it has power to pass any order or issue, direction as may be necessary to do complete justice in the matter"32.

vi. No Prejudging

Deciding without evidence would be prejudging. Quashing a proceedings while it is still at a preliminary stage and without affording the prosecution a reasonable opportunity to substantiate the allegation would be incorrect. This is also prejudging. In State of Bihar v. Raj Narain Singh,33 the Supreme Court had deprecated this practice of the High Court inspite of cautioning on previous occasions34.

34. The Supreme Court refers to the decision in Eastern Spinning Mills Sri. Virendrakumar Sharada v. Rajiv Poddar, AIR 1985 SC 1668.
"The reason given by the High Court for entertaining the petition for quashing and allowing the relief to the respondent is an analysis of the First Investigation Report and the statements of witnesses recorded during investigation and the discrepancy appearing therein is mainly in regard to the implications of the respondent by name.\textsuperscript{35}

Rajnarayan's name is recorded in some places as Rajan. The High Court recognised it as a discrepancy and quashed the proceedings. The High Court cannot create evidence where no scope existed or none required. It was not a stage for appreciating evidence. The case had not reached that stage.

"Evidence has yet to be taken, and the aspects which have been relied upon by the High Court could very well be clarified by evidence when the prosecution has its opportunity of placing the case through witness in court. What the High Court has done is pre-judging the question without affording reasonable opportunity to the prosecution to substantiate the allegations - a practice which has no more than one occasion been found fault with it by this court.\textsuperscript{36}

Interference by the High Court at investigation stage should only be in exceptional cases where non-interference would result in miscarriage of justice.\textsuperscript{37} Otherwise the court and the judicial process should not interfere at the stage of investigation of an offence. The Supreme Court also retorted in a reprimanding tone the unusual procedure of oral application and oral appeals and

\begin{itemize}
\item[35.] Supra n. 33
\item[36.] Ibid.
\item[37.] Supra n. 34
\end{itemize}
interim order interfering with investigation\textsuperscript{38}.

Invoking inherent powers at the stage of investigation amounts to premature interference. Investigation is the function of the agencies of the state like Police. A person shall not be allowed to avail the inherent jurisdiction of the High Court when the matter is still at a premature stage and the investigation is incomplete. The following is an enumeration of the decisions of the Supreme Court over the years. These decisions are to act as guiding force to the High Court for coming to the conclusion whether inherent power is to be used in a given situation. After consulting the Supreme Court decision it would be advantageous to acquaint with a few decisions of various High Courts. In \textit{Jehan Singh v. Delhi Administration},\textsuperscript{39} application filed before the Delhi High Court for quashing FIR, alleging offences under section 420 and 120B of IPC was dismissed. The Supreme Court upholding the decision of the High Court held that the High Court cannot adjudicate the reliability of the FIR by entering into an appraisal of evidence\textsuperscript{40}.

The reason for being apprehensive when investigation is interfered under section 482 Cr.P.C. is that filing of FIR is only the first step. The case is still in its nascent stage. The High Court shall not foreclose all options of the prosecution by quashing the FIR in a hasty and arbitrary manner. In \textit{Kurukshetra University and another v. State of Haryana and another},\textsuperscript{41} the Supreme Court took strong exception to the manner in which the High Court had

\textsuperscript{38} Ibid.
\textsuperscript{39} 1974 SCC (Cri) 558
\textsuperscript{40} The Supreme Court had followed the reasoning in \textit{State of West Bengal v. S.N. Basak}, (1963) 2 SCC 54.
\textsuperscript{41} 1977 SCC (Cri) 613
exercised inherent powers to quash FIR alleging offences under sections 448 and 452 IPC. FIR was quashed just after it was filed without notice to the complainant. It was held by the Supreme Court that inherent powers do not confer an arbitrary power on the High Court to act according to its whims or caprice. The force and content of the inherent powers are so potent that the court has to exercise such powers sparingly, with circumspection and in the rarest of the rare cases.

It is the paramount duty of the state to assist the court in administering justice by investigating every act where there is an offence. This was provided for, from the very being of administration of justice. Premature interference by the High Court is deprecated. In the Code of 1898, the committal inquiry by the Magistrate was considered to be a proceedings at the threshold. In Superintendent and Remembrancer of Legal Affairs, West Bengal v. Ashuthosh Ghosh and others the Supreme Court held that High Court was not justified in going into the merits of the case while exercising inherent powers. The High Court had quashed the proceedings even before the committal proceedings was complete. The principle in this regard had been holding the ground for several decades.

Quashing complaint at interlocutory stage is interference at a premature position. In State of Punjab v. Devinder Kumar and others, the Supreme Court held that High Court cannot arrive at a conclusion regarding the guilt or innocence of the accused on the basis of materials on record at a stage prior to the leading of

42. 1979 SCC (Cri) 991
43. 1983 SCC (Cri) 501
evidence by prosecution. The Supreme Court set aside the order of the High Court quashing proceedings under section 7(i) of the Prevention of Food Adulteration Act, 1954. In *State of Punjab v. Sat Pal* 44 Supreme Court set aside the order of the High Court and remanded the matter to the trial court.

In *Maninder Kaur v. Rajinder Singh and others*, 45 it was held that to quash a proceedings at the initial stage so as to strangle it at its inception was not justified. The Supreme Court set aside the decision of the High Court and restored the complaint to file. Complaint alleged offences under sections 363, 366, 376, and 368 read with 34 IPC.

In *Mohinder Singh v. Gulwant Singh* 46 the High Court quashed the proceedings. The complaint was filed under section 494 IPC for bigamy. In an enquiry under section 202 Cr.P.C. the only requirement is to ascertain whether the evidence adduced by the prosecution has made out a *prima-facie* case so as to put the proposed accused on a regular trial. The High Court erred in going into the sufficiency of evidence for conviction of offence of bigamy and quashing the case. The Supreme Court held that High Court exceeded the scope of enquiry provided under Section 202.47

Public confidence in High Court is founded on the clarity of

44. 1985 SCC (Cri) 141
45. 1992 SCC (Cri) 522
46. AIR 1992 SC 1894
thinking and purity of intention in the judgment. So when the allegations in the complaint *prima-facie* made out a case, quashing criminal proceedings at the initial stage was not proper. In *State of Maharashtra v. Ishwar Piraji Kalpatri and others*, the Supreme Court set aside the order of the High Court. The High Court quashed the proceedings alleging section 5(a) read with section 5(1)(e) of the Prevention of Corruption Act, 1947. It was held by the Supreme Court that the High Court was not justified in judging the probability, reliability or genuineness of the allegations made. It was recalled by the Supreme Court that powers under section 482 Cr.P.C. and Article 227 should be used only in extraordinary circumstances.

In *State of Orissa v. Bansidhar Singh*, the Supreme Court set aside the order of the High Court, which quashed the proceedings. The offence alleged was under section 302 IPC. The Supreme Court held that quashing criminal proceedings at the initial stage is not justified. The High Court had rejected the dying declaration before its veracity could be tested at trial. At the investigation stage the High Court cannot take into consideration statement of persons whose evidence is yet to be recorded at trial. If at all inherent powers are restricted at the stage of investigation it should be a lost case. Quashing criminal complaint at initial stage is to be an exception in applying inherent powers.

The High Court quashed the proceedings alleging offences un-

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48. 1996 (1) SCC 542
49. The Supreme Court had followed *Rupan Deol Bajaj v. K.P.S. Gill*, 1995 SCC (Cri) 1059. This negative capability of the H.C. threatens the creditworthiness of inherent powers also.
der Section 6 of the Prevention of Corruption Act.

In *State of M.P. v. Dr. Krishna Chandra Saksena*\(^5^1\) the Supreme Court had set aside the order of the High Court Sanction order was challenged. Sanction order was not *ex-facie* illegal. The allegation was that documents supporting the accused were not considered. Accused was subsequently promoted and retired, and also complainant was not traceable. According to Supreme Court all these are irrelevant factors for quashing the complaint. While quashing the proceedings at the entry stage the High Court is undertaking a delicate task. What the trial court failed to see the High Court must see. If the accused is discharged by the trial court, the High Court in revision ought to consider the matter in a clear perspective. There is no mechanical exercise of power. Preliminary stage of a proceedings is a premature stage.

In *State of Jammu and Kashmir v. Romesh Chander and others*,\(^5^2\) the Supreme Court reversed the High Court decision. Complaint was against an allegation of offences under Jammu and Kashmir Nationalisation of Forest Working Act, 1987. Supreme Court held that the High Court look into relevant law and allegations made in the charge-sheet and then consider whether any offence has been made out. The matter was remitted back to High Court.

At the initial or preliminary stage quashing is to be done sparingly. The High Court must be cautious to prevent miscarriage of justice. In *Rashmikumar (Smt) v. Mahesh Kumar Bhada*,\(^5^3\) the

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51. (1996) 11 SCC 439
52. 1997 SCC (Cri) 44
53. 1997 SCC (Cri) 415
complaint alleged offences under section 406 IPC. The High Court quashed the proceedings. The Supreme Court set aside the High Court's order. Before embarking upon the exercise of inherent powers, the court must keep in mind that social stability and social order required to be regulated by proceedings against the offenders in deserving cases. Even regarding interference at initial stage the High Court cannot be mechanical. It should actually apply its judicially trained mind to see whether a prima-facie case is made. In a proceedings alleging offences under section 200 IPC the High Court dismissed the petition. In *M.M. Rajendran v. K. Ramakrishnan*, the Supreme Court had allowed the appeal and the matter was remitted back to the High Court for fresh disposal. The High Court rejected the plea without examining the question whether the complaint prima-facie made out any offence and whether the ingredients of the offence alleged are satisfied. Similarly question of limitation and sanction for prosecution were not considered. The Supreme Court held that the attitude of the High Court was not commendable.

**VII. High Court not to Evaluate Evidence under section 482 Cr.P.C. Proceedings**

The normal rule is that in an application under section 482 Cr.P.C. the High Court does not evaluate evidence. The High Court is to read only the complaint and to see whether the complaint contains the offence alleged to be committed. The court shall not adduce or substract anything while doing so. If an of-

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54. 1997 SCC Cri. 849
fence is made out the court is not justified in quashing the proceedings. This is an effective restraint on the High Court from being erratic and wayward in its approach to the inherent powers. Similarly, the High Court cannot consider the factual correctness of allegations in the complaint regarding commission or omissions which constitute the offence.⁵⁶

Appreciation of evidence is a matter for the trial court. The verifiability of the facts are possible only through ascertaining the evidentiary value. An application to invoke inherent jurisdiction by the High Court is a step taken in advance by the accused. The objective is not only to avoid punishment but also to avert the trial. The High Court's involvement in the case is to be detached and dispassionate, objective and rational. If the case at hand has nothing to warrant interference by the High Court, then the trial must be left untouched. The High Court shall not shoulder the burden to apprise evidence in the case and ascertain the reliability of the FIR. This has been a very consistent and steady approach of the Supreme Court in the matter of exercising inherent powers. In Jehan Singh v. Delhi Administration⁵⁷ the Supreme Court endorsed the view of the High Court in dismissing an application for quashing the FIR. While exercising inherent powers the High Court is not to search for evidence to reach a decision⁵⁸.

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⁵⁶ Choice Canning Company Ltd. v. Ramachandran, 1988 (1) KLT (SN 67) at 30.

⁵⁷ 1974 SCC (Cri) 558. This is clearly laid down in R.P. Kapur v. State of Punjab, AIR 1960 SC 866. The Supreme Court had followed the reasoning in (1963) 2 SCR 54. State of West Bengal v. S.N. Basak

⁵⁸ Lakshmana v. Sulochana 1977 KLT 858, the Kerala High Court decided to interfere in a proceeding for offences under sections 331, 334, 354, 356 read with section 109 IPC.
Similarly, the High Court must realise the infirmity with which the trial Magistrate functions. In a proceedings under Section 202 Cr.P.C. the Magistrate cannot conduct a detailed inquiry into the matter. The Magistrate has only limited power. If the High Court interferes on this ground it would be beyond the scope of its inherent jurisdiction. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others,\textsuperscript{59} the Supreme Court set aside the High Court's decision. The High Court had quashed proceedings alleging offence under sections 302, 114, 148, and 147 IPC.

The High Court is not to evaluate evidence for coming to the conclusion regarding the use of inherent powers is an accepted dictum. This does not mean that the High Court is precluded from entertaining an application under section 482 Cr.P.C. in a case where there is no sufficient evidence to take cognizance. In State of Karnataka v. L. Muniswami and others,\textsuperscript{60} the Supreme Court dismissed the appeal against the High Court order. The High Court had quashed the charge sheet filed under sections 324, 326, 307 read with 34 IPC and section 120B of IPC. The Supreme Court had held that insufficiency of evidence is a good ground to quash the proceedings. The purpose of inherent powers in civil and criminal jurisdiction is to prevent degeneration of the proceedings into a weapon of harassment or persecution. The power under section 482 Cr.P.C. ought not to be encased within the straight jacket of a rigid formula\textsuperscript{61}.

The High Court's attitude must not be perverse in invoking

\textsuperscript{59} 1976 SCC (Cri) 507.
\textsuperscript{60} 1977 SCC (Cri) 404.
inherent jurisdiction. In Sewak Ram Sobhani v. R.K. Karanjia and others, the Supreme set aside the High Court order quashing the entire proceedings initiated on a complaint filed alleging offences under sections 499 and 500 IPC. The dispute arose in respect of recording a statement under section 251 Cr.P.C. The High Court quashed entire proceedings. The Magistrate's order was to record the statement without verifying a confidential report. The High Court, on the other hand, called for the report and perused the same and quashed the proceedings. According to the Supreme Court the interference of the High Court before recording the statement under section 251 Cr.P.C. was perverse. If there is prima-facie case made out in the complaint the High Court shall not look around for evidence. If allegations are specific the High Court shall not interfere. Two decisions of the Supreme Court shed light on this aspect. In Municipal Corporation of Delhi v. R.K. Rhotagi and others, in a proceedings under sections 5 and 7 of the Prevention of Food Adulteration Act, 1954, the Supreme Court held that the High Court could interfere only if prima-facie case is not made out. If prima-facie case is made out against one accused and not against the other the proceedings against the latter only could be quashed. But, the High Court had quashed the entire proceedings. In Municipal Corporation of Delhi v. Purushotham Das Jhunjunwala and others, again a case under the provision of the Prevention of Food Adulteration Act, 1954, decided on the same day i.e, 1-12-1982 as the above one the Supreme Court set aside the order of the High Court for the rea-

\[62\] 1981 SCC (Cri) 698.
\[63\] 1983 SCC (Cri) 115.
\[64\] 1983 SCC (Cri) 123.
son for a complaint considered consisting of specific allegation. Extent of available evidence against the accused were not relevant because the High Court was not expected to appreciate evidence. If *prima-facie* offence is made out in the complaint the High Court shall not interfere. It is not the High Court’s forte to go into the truth or otherwise of the allegation. In *J.P. Sharma v. Vinod Kumar Jain and others*,\(^{65}\) the Supreme Court set aside the order of the High Court quashing the proceedings alleging offences under section 120B I.P.C. and section 5 Imports and Exports (Control) Act, 1947\(^{66}\).

While exercising inherent powers the High Court cannot go into the question whether the offence could be established by evidence or not. In *State of Bihar v. Murad Ali Khan and others*\(^{67}\) the Supreme Court held that the High Court had only to see whether a complaint *prima-facie* discloses the alleged offences. The order of the High Court quashing the proceedings under sections 55, 51, 9 (1) of Wild Life (Protection) Act, 1972 was reversed by the Supreme Court.

Framing charge is a preliminary step in a proceedings. At the time of framing of charge the High Court is not justified in going into meticulous consideration of evidence and appreciate documents and evidence and statements filed by police. In *Radhey Shyam v. Kunj Behari and others*,\(^{68}\) the Supreme Court set aside the order of the High Court quashing the charge sheet. The High

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65. 1986 SCC (Cri) 216.
66. 1985 SCC (Cri) 180 and 1983 SCC Cri. 115. The Court relied on *Prathiba Rani*’s decisions also.
67. 1989 SCC (Cri) 27.
68. 1990 SCC (Cri) 194.
Court should bear in mind the gravity of the offence alleged also. In the above case, offences under sections 302, read with 120-B I.P.C. were alleged.

While exercising inherent powers the High Court is not a trial court, not even an appellate court. Appreciation of evidence, is minimum in section 482 Cr.P.C. proceedings. In Karpoori Thakur v. Baikunth Nath Dev and another69 the Supreme Court held as improper the style of the High Court in quashing the proceedings for offences under sections 467, 468, and 471 IPC. The Supreme Court deprecated the action of the High Court when it adverted to case diary, relied upon a letter addressed by persons to the officer in charge of a police station. The High Court quashed the proceedings after the above exercise on the ground that parties had settled their disputes. While criticising the High Court, the Supreme Court also held that it would not be expedient to allow the prosecution to continue.

The main opinion of the High Court exercising the power is that, there is no scope for evaluation of evidence. So the High Court dismissed a petition challenging the charge sheet alleging offences under section 448 IPC. In Bhaskar Chatteraj v. State of West Bengal,70 the Supreme Court on meticulous examination of the record as well as statements, held that there was no material connecting the appellant with the offence of criminal trespass. Allegations were vague and a result of after thought. So setting aside the decision of the High Court, the Supreme Court quashed the charge. Here, ironically, the Supreme Court did what the High

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69. 1990 SCC (Cri) 642.
70. 1991 SCC (Cri) 1077.
Court is prevented from doing while exercising inherent powers, ie, to evaluate evidence. In *State of Bihar and another v. P.P. Sharma*, the Supreme Court deviated from the above decision and held that the High Court was wrong in considering the affidavits and documents at a pre-trial stage.

The FIR contained allegation of offences under sections 409, 402, 468, 469, 471, 120B of IPC and section 7 of Essential Commodities Act. The High Court had quashed the proceedings. The Supreme Court held that the High Court had gone wrong because the veracity of the documents was to be proved in trial. Before the High Court, the petition was filed under Articles 226 and 227. The High Court should look to the complaint to see whether the allegation *prima-facie* constitute the offence. On the other hand, the High Court cannot rely on additional materials produced by the accused not admitted, or accepted by the complainant. In *Chant Dhawan (Smt) v. Jawaharlal and others*, proceedings alleging offences under sections 494 IPC was quashed by the High Court. While exercising inherent powers the High Court has no jurisdiction to wade through the entire original records produced by the Govt. as secret documents for court's perusal. The High Court after this denied the controversial issue regarding observance of proper procedure in exercising the Bofors contract and on these basis quashing the FIR and letter rogatory. In *Union of India & another v. W.N. Chadha* letter rogatory was issued un-

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71. 1992 SCC (Cri) 192.
73. 1993 SCC (Cri) 1171
der section 166 Cr.P.C. The proceedings also included offences under sections 120B read with sections 161 and 165A, IPC and provision of Prevention of Corruption Act read with 404, 420, 468, 471 IPC. The Supreme Court allowed the appeal and the order of the High Court was set aside. Quashing proceedings on the basis of affidavit filed by parties is not proper. In *Minakshi Bala v. Sudhir Kumar and others*, the High Court quashed the entire proceedings and the Supreme Court set aside the High Court's order. The High Court can rely on only those documents which are relevant.

While exercising inherent powers the High Court must be very vigilant. Quashing an FIR and investigation are a very rare phenomenon. In *State of Tamil Nadu v. Thirukural Perumal*, the Supreme Court reversed the orders of the High Court and allowed Tamil Nadu State Appeal. The proceedings initiated were under sections 147, 148, 342, 323, 395, 506 (ii) and 109 IPC. The Supreme Court held that power to quash an FIR and criminal proceedings should be exercised sparingly and that the High Court was not justified in evaluating the genuineness and reliability of allegations made in the FIR or complaint on the basis of evidence collected during investigation. The High Court cannot look into the merits of the case. No appraisal of evidence is allowed. In a, proceedings under sections 304, 326, 324, and 429 read with section 34 IPC, the petitions under sections 397 and 482 Cr.P.C. to quash the proceedings were dismissed by the High Court. In *Keshub Mahindra v. State of Madhya Pradesh*, the Supreme

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74. 1994 SCC (Cri) 1181.
75. 1995 (2) SCC 449.
76. (1996) 6 SCC 129.
Court had partly allowed the appeal and proceedings under certain provisions were quashed. The Supreme Court held that there was only a limited jurisdiction to make only a prima-facie appraisal of the charge sheet, and supporting material to decide whether the allegations constituted an offence.

One area of certainty in the application of inherent powers is that the High Court shall not be justified in appreciating evidence while taking a decision as to whether any prima-facie case exists. In *State of Bihar v. Rajendra Agarwala* the Supreme Court held that for quashing of criminal proceedings at the initial stage, the inherent powers should be very sparingly and cautiously exercised. Similarly, the High court is not justified in appreciating the evidence and came to the conclusion that no prima-facie case is made out. If there is a question of facts to be ascertained or disputed there is no scope for inherent power. It has to be gone into during trial. In *Hari Shankar Jalan v. Food Inspector, Cherukole and others*, the Supreme Court held the decision of the High Court correct. The complaint alleged offence under section 16 read with section 20-A of the Prevention of Food Adultration Act, 1954. The plea was that appellant's company nominated a person under section 17(2) of the Act who would only be liable for breach of the Act. The question is one of facts that can be gone into at the time of trial. The High Court was correct in dismissing the plea.

Where veracity of the fact is to be tested at trial there is no scope for inherent powers. Mere averment that the facts related

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77. 1996) 8 SCC 164.
78. 1997 SCC (Cri) 968.
to commercial transaction amounting to civil disputes is not sufficient to interfere through section 482 Cr.P.C. In *Nagpur Steel and Alloy Ltd. v. P. Radhakrishna and others* the Supreme Court had restored the complaint by quashing the High Court order. The complaint alleged offences under section 420 IPC. The Supreme Court held that the High Court was not justified in quashing the case merely because the alleged offence was committed during the course of a commercial transaction. The veracity of the allegation is to be tested on the basis of the evidence at the trial stage only.

The above decisions are found settled in the field. From an early time the Supreme Court was of the opinion that so far as the question of evaluating evidence is concerned in the context of applied inherent powers, the High Court has little role to play except perhaps to examine the absence or presence of legal evidence. This was the same position under section 561-A of the Code of 1898 also. The principle in respect of evidence, being fundamental, has acquired a lasting stand in the realm of inherent powers. In *Hazari Lal Gupta v. Rameshwa Prasad & another* the High Court dismissed the petition to quash the proceedings. It was held that the appellant could not challenge orders to which he agreed and later complied. In the absence of legal evidence or for any impediment to the institution or continuance of proceedings quashing is not justified. But, High Court does not enquire the reliability of the evidence. Likewise, the High Court should not interfere with investigation, because it is the statutory power

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79. 1997 SCC (Cri) 1073.
80. AIR 1972 SC 484.
of the executive.

In R.P. Kapur v. State of Punjab\textsuperscript{81} the Supreme Court streamlined the limitations of inherent power. The High Court dismissed the petition to quash the proceedings. It was held that inherent power cannot be exercised in regard to matters specifically covered by other provision of the Code. The High Court would be reluctant to interfere with the proceedings at an interlocutory state. The categories of cases where Inherent Powers can be invoked are classified. In State of West Bengal v. S.N. Basak\textsuperscript{82} the High Court quashed the proceedings is which FIR was instituted. As per section 156 Cr.P.C. the Police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this power cannot be interfered with by the exercise of power under section 439 Cr.P.C. or under the inherent power of the court under section 561-A old Code.

In Rajendranath Mahato v. T. Gangooly, Dy. Supdt. of Police, Purulia & others\textsuperscript{83} the High Court quashed the proceedings where by the Magistrate issued the process. It was held that the High Court under section 561-A of Cr.P.C. can go into the question as to whether there is any legal evidence. The High Court can go into the question whether there is any \textit{prima facie} case is made out and if the evidence is reliable or not. In the above contest of the attitude of the High Courts is worth analysing. A survey of the decision making process of the High Courts would reveal that the

\textsuperscript{81} AIR 1960 SC 866
\textsuperscript{82} AIR 1963 SC 447
\textsuperscript{83} AIR 1972 S.C. 470
reasoning of the Supreme Court in the above discussed decisions has crystallised. But there are deviant and erratic responses also. Since all the decisions of the High Court are not available for the Supreme Court to invoke its appellate jurisdiction the criminal justice system stands discredited due to erroneous decisions.

While applying inherent powers matters involving evidence are not entertained by the High Court. A question of fact is best ascertained by the trial court. ⑧4

Pleas of jurisdiction also are held not to be questions of law it is either question of facts, or mixed question of law and facts. Such pleas cannot be decided merely on the basis of averment made in the affidavit and hence no interference with inherent jurisdiction.⑧5 In a petition against complaint of cheating containing averments, of falsely advertising the petitioner's Yoga course was recognised by the Government and on the strength of this, deposits received from the applicants. The ingredients show that decision can be taken only through evidence.⑧6 In a private complaint on dishonour of a cheque, the reason given as 'account closed' can be looked into only with the help of evidence and therefore court could not interfere.⑧7 When a complaint alleging harrassment, threat and cutting of water and electricity supply of

"F.n. Here the endorsement 'refer to drawer' on a bounced cheque leading to the question whether there are sufficient fund in the bank or not, was held to be a question of fact"

⑧5. M/s. Garg Forgings Ltd. v. M/s. Steel Strips Ltd. - 1996 Cri. L.J. 3306 (P&H)


⑧7. Veera Raghavan v. Lalith Kumar, 1995 Cri. L.J. 1882 (Mad.)
the complainant's house, a mere denial of statement of the petitioner cannot be a ground for quashing investigation. This was so held in *Ravindar Wadhwa v. State.*

In *A. Balareddy v. Saraswathy and others*, it was held that finding of facts in a judgment will not normally be interfered by the High Court, under inherent jurisdiction. Here the issue was regarding maintenance of second wife. The marriage took place when polygamy was permissible. Presumption of marriage could be drawn from long cohabitation and documentary evidence. In a complaint alleging commission of abetment of offence of bigamy, the court held that when specific averments are made in the complaint, and the awareness of the accused regarding the earlier marriage, and intentionally aiding performance of 2nd marriage, interest of justice serves only when decision is taken by the trial court on evidences. (*Mohinder Jith Kaur v. Parminder Kour Gill*)

In *Gopal Chakravarty v. State and others*, allegations of abetment of suicide against husband and in-laws of the deceased where held to be not improbable. Allegation specifically makes about the persisting torture against deceased wife continuing for 17 years after marriage. Wife later became a victim of burning in the house of the husband and succumbed to her injuries. Referring to Landmark decisions of the Supreme Court the court held

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89. 1994 Cri.L.J. 1125 (A.P)
90. 1995 Cri.L.J. 1657 (P&H)
91. 1996 Cri.L.J. 3358 (Cal.)
that where *prima facie* is made out shutting out evidence by invoking inherent powers would be avoided.

The various responses of the High Court declining to interfere with the proceedings pending before the trial court, where matters of evidence are involved show the seriousness with which situation is considered. In the adjudicatory process evidence is crucial. Decision without evidence can be equal to decision without reason. So, a consistent approach for applying inherent powers where the question of appreciation of evidence comes the High Court is loathe to interfere. Ends of justice is the ideal. Securing the ends of justice, means, the awareness, care and caution, to be taken by the High Court, while applying inherent powers. To quash a proceedings means to keep nothing on the record. That amounts to preventing one party from bringing evidence in support of his contention. Therefore, High Court is at its strictest while applying inherent powers where question of evidence is involved. Any facts which is to be ascertained is left to the trial court, instead of assuming, presuming, or inferring while dealing with a petition under section 482 of the Cr.P.C. If it is to be ascertained whether certain reproduction of an item violates provisions of the copyright Act. It is for the trial court to consider the facts involved. If it is to be ascertained whether licence is necessary or not, it can be satisfactorily agitated before the trial court and can be adjudicated on the basis of evidence adduced.

Similarly, while dealing with a subsequent complaint, causing undue harassment and the complaint is of a different offence, it

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93. *P.K. Gopinathan Nair and others v. Executive Officer and another*, 1976 Cri.L.J. 171 (Ker.)
is not for the High Court to examine any peace of evidence. The accused person can move the Magistrate to show there is no evidence.\textsuperscript{94} A Magistrate while issuing process does not ascertain whether the accused will be ultimately convicted or acquitted, he is concerned only with the \textit{prima-facie} case.\textsuperscript{95}

When the trial court exercised the discretion under section 311 of the Criminal Procedure Code, to summon material witnesses the order was challenged under section 482 Cr.P.C. It was held that High Court would not be interfering in the legitimate exercise of discretionary power, and will not interfere in respect of matters seeking evidence. Whether a Prosecution Witness in a criminal case can be called upon to get his voice recorded for enabling an accused to get the same compare with an alleged tape recorded voice of the same witness was refused by the Magistrate. There is no provision in the Evidence Act governing such a situation.\textsuperscript{96} The attitude of the High Court would be negative as it can give any direction Magistrate court, that was the authority according to the law. And the court cannot direct the Magistrate to do an act which he is not empowered to act. The High Court can look into the legal evidence but where there is no abuse of the process of the court and which does come within the parametres prescribed for invoking inherent powers, in the interest of justice, the application is not entertained.\textsuperscript{97} The reluctance of the High Court to interfere when the investigation of the case is due to complete of

\textsuperscript{94} \textit{R. Meeria\textsuperscript{v.}v. State of A.P., 1977 Cri.L.J (NOC) 258 (A.P.)}

\textsuperscript{95} \textit{Jacob Harold Aranha \textsuperscript{v.} (Mrs.) Veera Aranha - 1979 Cri.L.J. 974 In Vinod Kumar and others \textsuperscript{v.} The Municipal Corporation of Delhi, 1980 Cri.L.J. (NOC) 26 (Delhi)}

\textsuperscript{96} \textit{Vinod Kumar and others \textsuperscript{v.} State, 1980 Cri.L.J. (NOC) 26 (Delhi)}

\textsuperscript{97} \textit{Brejamohan Das \textsuperscript{v.} Jogi Bisol, 1982 Cri.L.J. (NOC) 203 (Ori.)}
the law and evidence. In *Mangal Chouhan v. State*, a Division Bench of the Calcutta High Court held that when the FIR discloses a prima-facie case against the accused and the circumstances narrated therein corroborate the case, High Court shall not block the judicial process through the inherent power by preventing prosecution from leading evidence before the court. In *Kavitha Prasad v. State and another*, the Magistrate found that there was sufficient ground and there was no illegality or jurisdictional error. The High Court cannot look into the pros and cons of the complaint case and the findings of the trial court. The powers under section 482 Cr.P.C. is not exercised to stifle a legitimate prosecution. When a Jeep which is the material evidence charged for murder, is kept in the custody of the court, a petition to release the same cannot be entertained. Everything is to be maintained in the same condition, for being produced in the court of trial.

*Sarjoo Prasad v. State of U.P.* a decision taken on evidence collected in the court proceedings cannot be interfered with inherent powers. In *Ram Nivas v. Sate of U.P.* through proceedings under section 390 Cr.P.C. a person was chargesheeted, the absence of his name under the enquiry report of the investigating officer is not a bar. It cannot held that, if the High Court is to interfere with the trial, it would be interfering with the presumption of adducing evidence under section 482 Cr.P.C. does not mandate. In this case, it was also held that in a proceedings un-

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98. 1983 Cri.L.J. 279 (Cal)
99. 1993 Cri.L.J. 2002 (All)
100. 1990 Cri.L.J. 123 (All)
101. 1990 Cri.L.J. 460 (Mad)
der section 482 Cr.P.C. appeal cannot be open to the accused.

In *K.A. Adbul Salam Abdhurahiman v. K.N. Muhammadali*,\(^\text{102}\) petition was filed for quashing the complaint, it was filed on the ground that the accused had got several defences in his favour to controvert the case. Dismissing the petition, the Kerala High Court held that availability of defences is not a matter of the decision by the High Court in applying inherent powers. The court need only consider whether allegation in the complaint and sworn statement discloses any offence.

In *R.N. Bajaj v. K. Govindan*\(^\text{103}\) it was held that all that the complainant is required to allege as the task foundation on which the prosecution rests. The complete details of evidence need not be disclosed in the complaint because at the later part of the proceedings, it can be brought on record through the witnesses to be examine and document to be produced. These aspects cannot be considered by the High Court while invoking inherent powers. The Rules of evidence are applicable to all judicial fora, adjudicating cases. In *Brij Behari v. State*\(^\text{104}\) it was held that mere assertion in the High Court or trial court of a fact is not sufficient. Here the Magistrate cannot merely record the case on the ground of breach of contract and drop proceedings\(^\text{105}\).

In *Pavan Kumar Ruia v. S.P. C.B.I.*\(^\text{106}\) a Full Bench of the

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\(^{102}\) 1992 Cri.L.J. 4079 (Ker.)

\(^{103}\) 1993 Cir.L.J. 2317 (Mad.)

\(^{104}\) 1993 Cir.L.J. 2536 (All).

\(^{105}\) *B.L. Dalmia v. State of Haryana*, 1994 Cri.L.J. 2493 (P&H). It was held that in a case where criminal and civil liability were enquired by the petitioner in the same proceedings, the criminal proceedings could not be quashed, even though the same was compromised in the civil proceedings.

\(^{106}\) 1995 Cir.L.J. 3726 (Cal.)
Calcutta High Court held that when FIR *prima-facie* discloses an offence, there is no question of looking into the other materials under section 482 Cr.P.C. proceedings. The court cannot embark upon a parallel enquiry into the case. The allegation that investigation of malafide act are to be substantiated by the evidence. Similarly, in the matter of details regarding the standard of samples collected, and the manner in which sample was taken cannot be a ground for quashing FIR\(^{107}\).

In *Khan Mohammed v. Talib Hussain*,\(^ {108}\) it was held that existence of prima-facie case excludes the interference of the High Court. In the complaint, by the son-in-law against father-in-law, allegations of using abusive language and defamatory words made, complainant and witnesses were examined. The Magistrate has to scan evidences whether *prima-facie* case exists or not. It was held that the High Court is not precluded from going into evidence to see whether summons is rightly or wrongly issued.

In *Ardhendhu Sarkar v. Subhash Chandra Choudhary*\(^ {109}\) the accused refused to give his hand-writing to the investigation officer. Further investigation was ordered by the court. It was based on the subjective satisfaction of the Judge. So, interference by the High Court invoking inherent powers would not be congenial to the administration of justice.

Inherent powers cannot be exercised to prevent a case being

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108. 1995 Cri.L.J. 1401 (H.P)
109. 1996 Cri.L.J. 195 (Cal.)
decided on the basis of best evidence. It will not be in the interest of justice and also it will be an abuse of the process of the court. Inherent powers are strong weapons in the hands of the higher judiciary to steer the stream of justice clear of all accumulated pollutants. However, the power shall not be used to cause further malignancy in the currents of justice through abuse of the process of the court and defeating the ends of justice. The procedure adopted on the basis of the fundamental principles of criminal jurisprudence are to be allowed to be complied with. So far as a trial is concerned the most sacred part of it is in the appreciation of evidence. Best evidence must be collected. The trial court should have the opportunity to decide the case on the basis of correct, coherent and corroborative facts. There must be foolproof investigation capable of conserving the best evidence.

Every offence is a crime against the society. When an offender is brought to book a social purpose is served. The question of giving him a liberal punishment or lesser punishment is totally foreign to the aspect of conducting the trial in a solemn and sincere methods. No power of the court, even the inherent power of the High Court should be used to throw spanner in the works of the trial courts. So, if FIR discloses an offence. Police is entitled to investigate; Emperor v. Khwaja Ahammed110. Relying on it Punjab and Haryana High Court held in Kishorilal and others v. Dayanand and another,111 The High Court shall not consider under its inherent jurisdiction whether complaint discloses

110. AIR 1945 PC 18.
111. 1974 Cri.L.J. 902 (P&H)
all offences alleged. It is the duty of the trial court\textsuperscript{112}.

The High Court requires high sense of judicial aptitude. A prosecution shall not be attacked prematurely, nor should the police be allowed to have a filed day\textsuperscript{113}. High Court should know all the rules of evidence, but shall use none in considering the application of inherent powers. Scrutiny of allegation is sufficient. Court need not go in for evidence as held in \textit{Municipal Corporation of Delhi v. R.K. Rohtagi}\textsuperscript{114}. Based on the Kerala High Court in \textit{M. Kunhayisu v. P. Kalyani}\textsuperscript{115} held that High Court is not to consider whether the complainant would be in a position to prove the offence beyond reasonable doubt. Assessing evidence is not the function of High Court or Supreme Court. The higher judiciary cannot condescend to the level of a trial Magistrate\textsuperscript{116}.

When a person impugns a proceedings under the inherent powers of the court, he may have important pieces of evidence with him. But, the High Court would not advert to it. The petition could successfully use the evidence at trial. In \textit{B.M.L. Gar' v. U.T. Chandigarh}\textsuperscript{117} it was held that, at the time of taking cognizance the trial court takes no evidence. If at all the process of taking cognizance can be said to invoked taking evidence, the standard of evidence varies. At trial every syllable of facts collected is tested to test its relevancy with meticulous care and optimum

\begin{itemize}
\item \textsuperscript{112} \textit{Narmadeswahara Sharme and another v. Saiju Chandra Podder}, 1977 Cri.L.J. 959 Pat.) This is because cognizance is taken if a case is not of and individual.
\item \textsuperscript{113} \textit{Jiwat Ram v. State of Rajasthan}, 1978 Cri.L.J. 693 (Raj.)
\item \textsuperscript{114} \textit{AIR 1983 SC 67}
\item \textsuperscript{115} \textit{1987 Cri.L.J. 125 (Ker.)}
\item \textsuperscript{116} \textit{Raghubir Sing v. State of Bihar}, \textit{AIR 1987 SC 149}
\item \textsuperscript{117} \textit{1987 Cri.L.J. 507 (P&H)}
\end{itemize}
diligence. At the time of taking cognizance the court looks whether prima-facie evidence of offence is available. In the above case, the averment was that the complaint did not mention whether the milk was stirred before collecting sample. According to the petitioner, this alone was sufficient to quash the complaint. But, the High Court held that it requires examination of witnesses and evidence to be recorded. The primary factor is whether a prima-facie case is established. If this is done the trial court looks no farther. Summons is issued, If prima facie case is not established, no process is issued. If process is issued, it is an abuse of the process of the court and the High Court can interfere even if it is at FIR stage. The decision of the Allahabad High Court in Ram Lal Yadav and others v. State of U.P. and others,\(^{118}\) is relevant in this context. Application Section 482 to quash the FIR and investigation subsequent to Single Judge referred the matter before the Full Bench and sought correctness of decision of the Full Bench in the case of Prashant Gaur v. State of U.P.\(^{119}\) with respect to law laid down by Supreme Court and Privy Council. The question was whether the High Court has the inherent power under section 482 Cr.P.C. to interfere with the investigation by the police and whether the High Court has power to stay the arrest during investigation whether he has answer given to the above question by the Full Bench in the above case is in accordance with Supreme Court/Privy Council decisions. The court held that High Court has no inherent power under section 482 Cr.P.C. to interfere with the arrest of a person by a Police Officer even when no offence is

\(^{118}\) 1989 Cri.L.J. 1013 (All.)

\(^{119}\) 1988 All W.C. 828
disclosed in the FIR or the investigation is malafide. If the FIR does not refer to any offence - the investigation thereof is liable to be quashed under Article 226, and not in exercise of inherent powers under Section 482\textsuperscript{120}. The reasoning in this decision may look obsolete in the light of the latest thinking of the Supreme Court equating latest thinking of the Supreme Court equating the jurisdiction of the High Court under section 482 Cr.P.C. to the Article 226 and 227 of the Constitution\textsuperscript{121}. FIR only puts the criminal law in motion. If it is patently fallacious High Court need not be averse to press inherent powers into action. In \textit{Laiq Ram v. State of Himachal Pradesh}\textsuperscript{122} FIR sought to be quashed on the ground that continuation of investigation would amount to harassment and was misuse of powers by police- Petitioner is not able to convince that there was no case at all made against him. Only investigation could reveal the degree of his culpability in the matter.

The petitioner cannot anticipate police excesses and make it a ground to came to the Magistrate mere allegations of malafides also would not suffice the High Court to quash the proceedings. In \textit{P.R. Gopal alias Rajagopal v. Inspector of Police, C.B. CID}\textsuperscript{123} it was held that the proceedings can be quashed if allegations in FIR do not make out any offence or if on face of complaint no offence is constituted. Allegation of malafide against complainant or prosecuting agency cannot be a ground for quashing the


\textsuperscript{121} See chapter III

\textsuperscript{122} 1990 Cri.L.J. 1350 (H.P)

\textsuperscript{123} 1992 Cri.L.J. 2087 (Mad.)
The court while indulging in a matter invoking the inherent powers, it should not only advert to the merit of the petition but also alert itself the lawful intent of the community. In Omraonal Goyal v. State of West Bengal and others\(^\text{124}\) Revision application filed under Section 482 and Article 227. Court has rejected the contention that FIR does not disclose by cognizable offence. It was also found that FIR disclosed *prima-facie* violation of the provision of the Essential Commodities Act and section 8 of the West Bengal Anti - profitesing Act. Also held that in the matter of Administration of Criminal Justice, the exercise of power to quash the police investigation will be detrimental to the interest of the community at large. In this case the court granted time to the petitioner for preferring an appeal against the order of confiscation, if any passed.

The High Court shall not speculate anything about the possible outcome of the proceedings while inherent powers are invoked. If the High Court is to mediate over the outcome of the prosecution and professedly to avoid a futile exercise of trial by quashing FIR that itself would be gross abuse of the power of the court.

In *Union of India and others v. B.R. Bajaj and others*,\(^\text{125}\) Supreme Court took exception to the High Court's attitude in quashing the proceedings. When the FIR disclosed omission of a cognizable offence. The proceedings under Section 120-B read with

\(^{124}\) 1995 Cri.L.J. 2611 (Cal.)
\(^{125}\) 1994 SCC (Cri) 477
sections 418, 468 IPC and Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act was quashed by the High Court. Order of the High Court was set aside by the Supreme Court holding that the High Court cannot ascertain whether offences alleged were made out or not. Investigation in a statutory power of the police and the High Court is not justified to interfere through the medium of inherent powers.

If the Magistrate pass an order under section 204 Cr.P.C. to summon the accused on the basis of available materials the High Court shall not interfere. Section 204 Cr.P.C. warrants the Magistrate's opinion and it is not necessary to state reasons for the opinion *Hatia Swain v. Chinthamani Mishra*\(^{126}\). Issuing summons is a matter for the satisfaction of the trial judge. The course of the case and the fate of the accused persons would ultimately be denied that a full-fledged trial.

In *T. Parthasarathy and others v. Smt. Madhu Sangal*\(^{127}\) complaint was filed against officers of cantonment Board under sections 179, 181, 256 of Cantonments Act, 1924. Offences under sections 149, 341 of the Penal Code was also alleged. Processes were issued under section 204 Cr.P.C. to officers as *prima facie* case was established. Actions of the officers were not covered under section 250 Cr.P.C., and therefore Process could not be quashed.

If notice of demolition had been issued to the complaint under the Act and terms of such notice had not been complied with, the Board or person giving such notice could after giving notice

\(^{126}\) 1990 *Cri.L.J.* 47 (Ori).
\(^{127}\) 1992 *Cri.L.J.* 26
in writing to the complainant, take action towards demolition and recover all expenses involved there in from him. Demolition of structure without complying with the requirement of provisions was illegal.

viii Matters of Public Interest

Moreover, the subject matter involved would be such that if let off without a proper trial it would eat only among the very vitals of the society. It is all the more significant when the matter is of great social and public importance and requires adjudication or the basis of evidence. With matters like Water Pollution, narcotics peddler, breach of Negotiable instruments, Food adulteration cases, corporate crimes, white collar crimes, terrorism, communalism and other attendant social maladies on the increase the High Court as the court with inherent powers and other constitutional and statutory power must be an initiation for generally the social interest. A culprit shall not be let free even without giving the society a chance to seek him invoke or culpability under the matter of inherent powers. In M/s. Trans Asia Carpets Ltd. v. State of U.P.\textsuperscript{128} the complaint was for offences under section 44 of Water (Prevention and control of Pollution) Act, (Act 6 of 1974) the question is of extent of pollution or whether affluence is being discharged as stream or well or is being used otherwise it was held that the petitioners can raise these questions before Magistrate concerned and them the application for quashing of proceedings not proper.

In Rekha v. Asst. Collector of Customs,\textsuperscript{129} the petition for
quashing criminal proceedings where the Prosecution of accused for possession contraband under NDPS Act was initiated. It was held that the question whether confessional statement of accused was voluntary or not cannot be decided under section 482 Cr.P.C. The trial court can decide question on assessment of evidence before him.

Similarly by issuing cheques without the intention to honour the same the very sanctity of negotiable instruments is violated. A number of questions generally emerge regarding the question of limitation, and genuineness of the situation, discrepancy in the endorsement, vague notice, evasion of service of notice etc., which would require evidence to decide without infracktion of the ends of justice. When compoundable crimes are on the increase, in an unprecedented manner, the culprits shall not be allowed to escape under the comoflage of corporate personality.

Among the different factors which tend to structure and confine the application of inherent powers the principles of evidence are most assertive, while exercising inherent powers documents sought to be brought on record by the defendant cannot be looked into by the High Court.

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133. *Syed Hamid Bafaky v. Moideen*, 1996 Cri.L.J. 1013 (Ker.)
The reason for an adamant approach by the Supreme Court and the High Court against invoking inherent powers is cases where evidence is required is to protect the very foundation of the criminal judicial process. If every accused as a matter of course is entertained by the High Court through inherent powers the public trust in the system will be endorsed. Even in cases where the High Court and Supreme Court interfered the needle of the public criticism had pointed towards the ivory tower cult of adjudication oblivious of the harsh realistics out in the world. This is the reason for the Supreme Court to remind the High Courts and itself that "inherent power should be invoked only in the rarest of the rare cases. The essence of Supreme Court's attitude in that "No inherent powers in Economic offences or offences of moral turptitude or crimes of grave nature. In State of Himachal Pradesh v. Pirthi Chand and another,¹³⁶ allegation was offence under section 20 of the Narcotic Drugs and Psychotropic substances Act. 1985. The Supreme Court held that in quashing of FIR/Charge Sheet/complaint the inherent powers must be invoked only in rarest of rare cases. The High Court should not weigh the pros and cons of the prosecution case or consider the effect of non-complaince of mandatory provisions of law. High Court must take care.

¹³⁶. 1996 (2) SCC 37