CHAPTER - VII

EXTENT AND REACH OF INHERENT POWERS

The effect of application of inherent powers in criminal justice system can best be evaluated by examining the *modus operandi* and the responses of the judiciary to the situations arising in cases. The Supreme Court of India has the last word but the High Courts get more opportunities to examine various situations. Therefore, the extent and reach of inherent powers in criminal justice system is best evaluated through acquaintance with the decisions of the Supreme Court and High Courts. The Supreme Court lays down principles for the application of the power. The High Courts adjust the programme of their judicial process according to the decisions of the Supreme Court. But, owing to the nature of the inherent powers the Supreme Court is not able to articulate the possibilities of inherent powers for all times to come. Even definition of inherent powers like definition of law is difficult. So, to have a better understanding of the dynamics of inherent powers, it is more meaningful to try to read the minds of High Court and Supreme Court in coming to the conclusion which they have reached.

i. **Difficult to define**

When the decision making process is analysed, one would realise the difficulty in defining the inherent power like defining the law itself. The classical definition of law is also in terms of the administration of justice. Salmond defined law as the body
of principles recognised and accepted in the administration of justice. This definition of law explains only one dimension of law. Giving a universally acceptable definition to law is a 'thorny intellectual problem' as Glanville Williams said of defining crime. In the juristic approach to the definition of law one travels from the conventional definition of law as a command of the sovereign;¹ to the nonconventional and individualistic approach that there is no necessity for defining law,² and if at all defined, it is done in a pragmatic style, like O.W. Holmes' opinion that, 'Life of law is not logic, it is experience'³.

Inherent powers are in the present context powers of the court which are statutorily recognised, saved and preserved. In criminal law, it is the power of the High Court under section 482 of the Code of Criminal Procedure, which saves the inherent powers⁴. It also shows the inexhaustive character of the Code. Best effort is taken to consolidate and amend the law relating to the criminal procedure through the enactment of the Code of Criminal Procedure, 1973⁵. It was done with an effort to simplify the procedure and speed up trials⁶. Even then, in Sec. 482 of Cr.P.C. 1973, in an attempt to give an aura of consummation and finiteness the draftsmen of the Code have saved the inherent powers.

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1. John Austin, defined law as a command of the sovereign.
2. Olivecrona, a Scandinavian Realist suggested that there is no necessity for defining law.
3. The path of Law.
4. In the Cr.P.C. of 1898, Sec. 561-A contained the saving provision of the inherent powers of the High Court. Ref. supra. Introduction n.28
5. Act 2 of 1974:- The provisions are arranged in a systematic manner in 484 sections in 37 Chapters with each chapter having its chapter headings, and two schedules containing classification of offences and forms of procedure.
6. The Code of 1898 had 565 sections and often drew flak for being clumsy.
The concept of inherent powers is so indeterminate and inscrutable that a technically perfect definition is a near impossibility. The generalisations of the Supreme Court on inherent power while examining the correctness of a High Court decision are the most appropriate definitions. The Supreme Court over the years have laid down guidelines and illustrations while testing the rationale of the High Court's decisions.

ii. The Law Commission's Suggestion

The Law Commission in its 14th report has underlined the presence of inherent powers in the following words:

"Though Laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make impossible to lay down provisions capable of governing every case which in fact arises. Courts which exist for the furtherance of justice should, therefore, have authority to deal with cases which, though not expressly provided for by the law, need to be dealt with to prevent injustice or an abuse of the process of law. This had led to the acceptance of the principles that even in cases where the law is silent and has made no express provision to deal with a situation which has arisen, the courts have inherent powers to do real and substantial justice and prevent an abuse of their process"\(^7\)

The Law Commission of India suggested statutory recognition for the inherent powers of the subordinate courts also. While

\(^7\) First Law Commission, 14th Report at p. 828.
summarising the conclusions in the Report, the Commission made this suggestion. The Commission's view is contrary to the jurisprudential character of the inherent powers. A power that is not defined or structured or which is impossible for the legislature to exhaustively state, cannot be distributed among the trial courts. When the Commission submitted its 41st Report on the Code of Criminal Procedure, 1898, a draft code was also submitted. In this draft, 'section 483' contained the above mentioned proposal. Commission’s proposal was rightly discarded as inherent powers in criminal justice system cannot be diffused. The judicial process of criminal justice system has demonstrated that inherent powers are to be invoked only in the rarest of rare cases. There must be circumspection. If all the trial magistrates and sessions judges are to invoke powers in the nature of inherent powers as understood in the present day context, it will lead to an unintelligible situations.

The development of inherent powers in criminal justice system is found to be along lines of constitutional law principles like equality, judicial review, Rule of Law etc. This shows that the states prerogative in the criminal justice administration is limited and abuse of the prerogative is checked with the help of the inherent powers. The gravity of the power is so immense that even the High Courts, occasionally, are found deviating from rational procedure in the application of inherent powers. The stature of the court, the honour justice, interest of the society, the security of the individual, and the maturity of the very polity is assessed on the manner in which justice is administered by the courts.

8. Ref. supra at 830.
So far as civil courts are concerned the facility to invoke inherent powers are extended to the entire hierarchy. The palpable difference, in this context, with the application of the inherent powers in criminal justice system is that the civil courts resort to inherent powers for every interlocutory contingencies. Unlike in criminal cases, the proceedings survives even after applying inherent powers.

iii. Supreme Court on the Contours of Inherent Power

The Supreme Court often formulates and reformulates the concept of inherent powers. The Supreme Court has tried to streamline the contours of the inherent powers. It cannot be said to be an attempt at structuring the inherent powers. The Supreme Court's decisions at time appear to be prescribing the permissible and impermissible limits of inherent powers. With imperceptibly minor variations, the Supreme Court goes on expounding the inherent powers. It is profitable to examine a few important norms developed by the Supreme Court in this context, before going through the decision making process of the High Courts.

a. inherent powers have to be exercised sparingly, carefully and with caution

The running theme of the Supreme Court decisions is that inherent powers have to be exercised sparingly, carefully and with caution. The facts of the case must justify the grounds specially laid down in section 482 Cr.P.C. In matters specifically cove-

9. Section 151 C.P.C.: - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such as may be necessary for the ends of justice or to prevent abuse of the process of the court.

ered by the other provisions of the Code inherent powers cannot be availed of\textsuperscript{11}. The High Court can exercise inherent powers, if the FIR or the complaint contains allegations which even if, taken at their face value and accepted in their entirety do not constitute the offence. In such cases, the appreciation of evidence is not necessary. If the accused cannot justly contend that on the face of the record the charge levelled against him is unsustainable, inherent powers cannot be used\textsuperscript{12}.

b. inherent powers cannot be invoked to rehear the appeal dismissed in default

According to the Supreme Court, inherent powers cannot be invoked to rehear the appeal dismissed in default, because section 369 read with 424 of the Criminal Procedure Code, 1898, specifically prohibits it\textsuperscript{13}. While invoking inherent powers, the High Court cannot obstruct the statutory right of the police to investigate. Therefore, quashing of the investigation started by the police is not taken in good taste\textsuperscript{14}. The Power of the High Court to make orders in securing the ends of justice is contained in the inherent powers. This includes power to expunge irrelevant passages from a judgment or order of a subordinate court. In one case a Doctor sent his report to the Magistrate in a bail application. The Magistrate made remarks about the Doctor, that he was negligent, and careless. It did not mean that the Magistrate had flagrantly abused the process of the Court. But, the court held

\textsuperscript{12} Ibid.
\textsuperscript{14} State of West Bengal v. S.N. Basak, AIR 1962 SC 447.
that inherent powers could not be exercised to expunge the remarks\textsuperscript{15}. But while invoking inherent powers, power can be exercised for expunging the sweeping and general observations made against the entire police officers, in a case involving only one police officer. It was so held in \textit{State of U.P. v. Muhammad Naim},\textsuperscript{16} in \textit{Pampapathy v. State of Mysoor},\textsuperscript{17} the Supreme Court held that the inherent powers could be used only for any one of the three purposes, specifically mentioned in section 561-A Cr.P.C. 1898. The question before the court was whether it could cancel the order of sentence and justify granting of bail to the person. It was held in the affirmative and the order of suspension of sentence and grant of bail made under section 426 Cr.P.C., 1898 could be cancelled and order the rearrest and committal to jail custody of the appellant. In \textit{State of Uttar Pradesh v. Kapil Deo Shukla} it was held that as unreasonable delay has been occurred, the court could invoke inherent power\textsuperscript{18}.

c. It is premature to quash the proceedings which are in the process of police investigation

In \textit{Ram Narain v. State of Rajastan},\textsuperscript{19} it was held that petition under section 561-A Cr.P.C. should be disposed of only after hearing the counsel of the applicant. It is premature to quash the proceedings which are in the process of police investigation. Moreover, the High Court cannot enter upon an enquiry to consider the probability of evidence. Attempt to invoke inherent pow

\textsuperscript{15} Dr. Reghubir Saran v. State of Bihar, AIR 1964 SC 1
\textsuperscript{16} AIR 1964 SC 703.
\textsuperscript{17} AIR 1967 SC 286. also see sections 482 and 198 Cr.P.C. 1973.
\textsuperscript{18} AIR 1973 SC 494.
\textsuperscript{19} 1973 SCC (Cri.) 545.
ers in a premature and incompetent manner is repelled by the Supreme Court. In *Jehan Singh v. Delhi Administration*, the Court held that inherent power of the High Court has no use in an investigation except to meddle with the statutory investigation of the case. In *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh & others*, the court was concerned with an application to exercise inherent power subsequent to an earlier one considered. First application was dismissed. But, it was held that 2nd application was permitted and it did not amount to reviewing the earlier order. Since the inherent powers are aimed at securing the ends of justice one cannot predict the occasion for invoking the powers.

d. for securing the ends of justice and to prevent the abuse of the process of the Court

While espousing the aspects of inherent powers one area where the Supreme Court has evinced keen interest has been the transition from 1898 Code to 1973 Code. In *Philip v. Director of Enforcement New Delhi*, the application was made without the disposal of another one pending under the earlier code. There occurred no sea change in the attitude of the Supreme Court and the inherent powers remained unaltered by the new Procedure Code of 1973 also. In *Palaniyappa Gounder v. State of Tamil Nadu*, it was held that when a specific purpose provided for in the code inherent powers cannot be exercised. In *State of*
Karnataka v. Muniswami & others,

the Supreme Court made positive exposition of the inherent powers. It was held that for securing the ends of justice and to prevent the abuse of the process of the Court, High Court was entitled to quash the proceedings if patent injustice was detected. In this decision, the Supreme Court held that the High Court's inherent powers both in civil and criminal matters were designed to achieve a salutary public purpose. The proceedings in a court shall not degenerate into a weapon of harassment of prosecution. Scaling through the length and breadth of the Supreme Court's decisions, the areas where judicial consummation has been reached, are discernible. In Sharda Prasad Sinha v. State of Bihar, the court held that if the allegation set out in the complaint or the charge sheet does not constitute any offence the inherent power could be exercised to quash the proceedings.

e. when a particular order is expressly barred under section 397(2) Cr.P.C., inherent powers cannot be invoked

In developing a symmetry of action in invoking the inherent powers a knotty situation arose in the position of the court with respect to provisions contained in section 397 of the Cr.P.C. providing for revision. The principle that has crystalised in the course of judicial process is that when a revision is barred under sub section (3) or sub section (2) of section 397 Cr.P.C. A harmonious construction is necessary here. When a particular order is expressly barred under section 397(2) Cr.P.C., inherent powers cannot be invoked. This stems from the principle that inherent

powers of the courts ordinarily be exercised only when there is no express provision on the subject matter. This ratio of *Amarnath v. State of Haryana,*\(^2^6\) has shed light in deciding a number of cases. Judicial process is so complex that, a rigid statement of law as is contained in *Amarnath*'s decision is likely to get liberalised because section 397 Cr.P.C. is only revisional power which is conferred through statute. Inherent powers are plenary and prerogative powers of the Court recognised and preserved over and above, the provisions of the Code. In *Kurukshethra University v. State of Haryana,*\(^2^7\) the Supreme Court examined a situation where High Court had arbitrarily exercised the inherent powers. It was held that quashing an F.I.R. when the police had not even commenced investigation would amount to application of inherent powers on the basis of whims and caprices of the individual judge.

**f. to tackle the formalism attached to the filing of petitions**

Another area where Supreme Court operated its mechanics in jurisprudence was to tackle the formalism attached to the filing of petitions. In *Madhu Limaye v. State of Maharashtra,*\(^2^8\) the Supreme Court held that the label of the petition filed by the aggrieved party is immaterial. The High Court can exercise the powers in accordance with section 482 Cr.P.C. inspite of the fact that invoking the revisional powers of the High Court is impermissible. A paradigm shift in the attitude of the Supreme Court, in experiencing new dimensions to the reality of the inherent pow-

\(^{26}\) AIR 1977 SC 2185.

\(^{27}\) AIR 1977 SC 2229.

\(^{28}\) AIR 1978 SC 47.
ers, commences with Madhu Limaye's case. In that case, the principles ordinarily and generally followed in the exercise of the inherent powers were considered, i.e., no inherent powers would be applied if specific provision is there in the Code, inherent powers are used only very sparingly and powers are not used against express bar of law. Here the Supreme Court was faced with a situation where interference was absolutely necessary on the face of patent abuse of the process of the court, and in the interest of justice. Then fettering the power of the High Court under section 482 Cr.P.C. would itself be an injustice. The Supreme Court justified its action by saying that, such a case would be few and far between. In the present case it was held to be an instance, where proceedings were initiated illegally, vexatiously, and without jurisdiction.

The dynamic advancement commenced with this case was continued in Raj Kapoor v. State (Delhi Administration)\(^29\). The court tackled the tendency to meddle with strength of inherent powers in Raj Kapoor. The belief is that there is no revision against interlocutory order and therefore, no petition under section 482 also. This dogma was contradicted with the opening words of section 482 Cr.P.C. itself. The Supreme Court held that nothing could affect the amplitude of the inherent powers preserved in so many terms with section 482 Cr.P.C. Perhaps easy resort to inherent powers may not be right. But, that is not an excuse that there is no inherent powers at all. There is no question of jurisdiction involved according to the Supreme Court. The only limitation is self-imposed restraint, so that inherent powers

\(^{29}\) 1980 SCC (Cri.) 72: AIR 1980 SC 258
do not invade to areas set apart for specific powers under the Code.

The term interlocutory order is to be given a very liberal construction in favour of the accused, in order to secure complete fairness. This was the view adopted by the Supreme Court in *V.C. Shukla v. State, through C.B.I.*[^30] Not only Indian Penal Code offences, but also offences under numerous Acts are questioned under the inherent jurisdiction. The court in *V.C. Shukla*, held that sub section (3) of section 397 Cr.P.C. does not limit the inherent powers of the High Court.

The Supreme Court in *Smt. Sooraj Devi v. Pyarelal & another*,[^31] held that specific prohibition contained in a provision in Criminal Procedure Code cannot ordinarily be got over through section 482 Cr.P.C. This decision was in the context of the prohibition contained in section 362 Cr.P.C. against the Court altering or reviewing its judgment. Inherent powers are not contemplated for getting over section 362 of Cr.P.C. In *Drugs Inspector, Palace Road, Bangalore v. B.K. Krishnaiah*,[^32] the Supreme Court laid down a principle that the primary duty of the High Court is to see whether allegations made in the complaint or petition make out a prima-facie case. In the instant case, the allegation was that, the accused had stocked drugs which had expired their period of potency. It was an offence under section 18(1)(vi) of the Drugs and Cosmetics Act, 1940 and Rules. The alleged action was punishable under section 28, 27B of the Act. The Mag-

[^31]: 1981 SCC (Cri) 188.
istrate proceeded with the trial and the High Court quashed the proceedings. It is a matter to be established by evidence during trial and therefore, judgment of the High Court was held to be erroneous.

There are occasions where Supreme Court detect enthusiasm on the part of the High Court to invoke inherent powers. In *Sewakram Sobhani v. R.K. Karanjiya, Chief Editor, Weekly Blitz & others*, the High Court displayed its overzealous attitude. The respondents only wanted that the Magistrate should not proceed to record the plea of the accused persons under section 251 of the Cr.P.C. without pursuing the enquiry report under section 91 of the Code. There was no application before the High Court under section 482 Cr.P.C. for quashing the entire proceedings. The applicants wanted the impugned order to be quashed and the learned Magistrate be directed to pursue the report under Section 91. The Supreme Court deprecated this attitude of the High Court for quashing the entire proceedings.

In *Dr. R.V. Murthy v. State of Karnataka*, the High Court while granting leave to appeal to the State against the order of acquittal, also passed an order asking to show-cause why the petitioner should not be sent to trial. The High Court had no occasion or jurisdiction to pass any order at the initial stage by invoking the discretion under section 482 Cr.P.C. in directing the trial of the appellant. According to the Supreme Court that itself amounted to serious abuse of the process of the Court and it resulted in gross and substantial injustice to the appellant. The

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33. AIR 1981 SC 1514.
34. AIR 1982 SC 677.
above decision of the Supreme Court displays a usual phenomenon in the history of inherent powers. The Supreme Court is called upon on occasions to consider the actions of the High Court in invoking inherent powers of the Court. The differences in perceptions of the Supreme Court and High Courts make telling effect in the applications of inherent powers. In *Kacheru Singh v. State of U.P.*\(^{35}\) it was held that the High Court is entitled to examine the validity of an order passed under section 341 Cr.P.C. Since section 397(2) Cr.P.C. bars revisions inherent powers could certainly be applied. The bar contained in section 341 of the Criminal Procedure Code cannot be held against application under sections 482 Cr.P.C. This position was reiterated by the Supreme Court in other decisions also. In *Lalith Mohan Mondal & others v. Benoyendranath Chatterjee*,\(^{36}\) the Supreme Court remitted the case to the High Court with a direction to sent for the records and satisfy itself whether the order directing the complaint to be filed was expedient in the interest of justice. The Supreme Court also directed the High Court to see for itself whether inherent jurisdiction under section 482 Cr.P.C. was to be invoked in such a situation. Resorting to the remedy under section 482 Cr.P.C. after loosing all legal battles under other provisions of law including civil litigation, itself is an abuse of the process of the Court. In *Chandrapal Singh & others v. Maharaj Singh & another*,\(^{37}\) the respondent after loosing all rent control proceedings filed a criminal complaint against the petitioner. It was held that invok-

\(^{35}\) 1982 SCC (Cri) 696.

\(^{36}\) AIR 1982 SC 785.

\(^{37}\) AIR 1982 SC 1238.
The inherent jurisdiction in such circumstances, is the only remedy and the disinclination of the High Court to use the power to quash the proceedings was criticised by the Supreme Court.

The Supreme Court's endeavor to define the mechanics of inherent powers under section 482 Cr.P.C. is onerous, because there could be cases apparently identical, but at the same time having substantial differences. The decision of the Supreme Court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi & others*, 38 and the decision in *Municipal Corporation of Delhi v. Purushotham Dass Jhunjunwala*, 39 offer such a scenario. In Junjchunwala's case, the High Court quashed the proceedings and the Supreme Court ratified it, because complaint did not contain specific allegations against the petitioner. Where as, in R.K. Rohtagi's case, the Supreme Court considered the regulation of inherent powers through section 397(2) of Cr.P.C. The Supreme Court held that the powers under section 482 Cr.P.C. are separate and independent power for doing *ex-debito justitiae*, in case where grave and substantial injustice has been done. It was held that equating inherent powers with revisional powers was against the concept of the ends of justice.

g. the high court must have strong reason to believe that process of law is being misused to harass a citizen

One thing which is reiterated by the Supreme Court is the requirement of circumspection with which inherent powers are to be exercised. The High Court must have strong reason to believe that process of law is being misused to harass a citizen. In

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39. AIR 1983 SC 158.
L.V. Jadhav v. Shankarrao Abasaheb Pawar & others,\textsuperscript{40} the complaint was filed after obtaining the necessary sanction of the State Government as required by section 4 of the Dowry Prohibition Act, 1961. The complaint \textit{prima-facie} disclosed the offence. The High Court quashed the complaint. According to the Supreme Court, the High Court ought to have considered the relevant aspects of the case in a clearer perspective and dissuaded from interfering under section 482 Cr.P.C.

The High Court is not expected to give legal advice to the parties under the inherent powers jurisdiction. In \textit{Pratibha Rani v. Suraj Kumar & another},\textsuperscript{41} after quashing the complaint, the High Court directed the complainant to seek civil remedy. The facts of this case, revealed the vulnerability under which ends of justice remained. A helpless married woman, was turned out by her husband. Her ornaments, money and clothes were not returned. She got only some relief from the trial court. But, when she moved the High Court, she was coolly told to approach civil court. According to the Supreme Court, the approach of the High Court was one devoid of any respect for all norms of justice and fair play. In the complaint, she had pleaded offence under section 405 I.P.C. A \textit{prima-facie} case for summoning the accused was made out. She ought to have been given an opportunity to prove her case rather than her complaint being quashed. When such contingencies arise, the Supreme Court criticises the High Court in no uncertain terms. The inherent powers of the High Court to quash a criminal proceedings is not to be extended for mere ask-

\textsuperscript{40} AIR 1983 SC 1219.
\textsuperscript{41} AIR 1985 SC 628.
ing. The High Court does not work under any norms or directions, because the inherent powers are not structured properly. But, that is not a reason for the High Court to exercise the power in a capricious manner.

In *J.P. Sharma v. Vinod Kumar Jain & others*, the Supreme Court set aside the order of the High Court quashing the complaint. Here the High Court, made its indulgence basing its reasoning on a subsequent report by the C.B.I. That is not ground for quashing the criminal Proceedings. The High Court is not expected to add or substract anything from the complaint. In *Bindeshwary Prasad Singh v. Kali Singh*, the Supreme Court considered the capacity of a Magistrate to revive or restore a complaint dismissed on default under section 203 of the Criminal Procedure Code. Inherent powers are available only to the High Courts. The Magistrate become *functus officio* once the order is passed. This was also considered in *Major General A.S. Gauraya v. S.N. Thakur*. In exercising inherent powers the Court is to examine whether the Code contains any provision enabling a Magistrate to exercise an inherent jurisdiction. Section 482 Cr.P.C. specifically states that inherent powers of the High Court are saved. In *Major General A.S. Gauraya’s* case, Supreme Court followed the decision in *Bindeswary Prasad Singh’s* case. The Magistrate never had a power similar to one in Section 151 of the C.P.C. The Magistrate had no jurisdiction to recall an order dismissing the complaint. The remedy of the complainant was to

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42. AIR 1986 SC 833.
43. AIR 1977 SC 2432.
44. 1986 SCC (Cri) 249.
approach the Sessions Court or High Court under revision.

h. certain special subject to be viewed with seriousness

There are certain special subject matters which are to be viewed with great seriousness. Terrorism is one such subject. In the Terrorists And Disruptive Activities (Preventions) Act, 1987, the High Court’s inherent jurisdiction is totally excluded. Therefore, an application for grant of bail cannot be entertained under section 482 Cr.P.C. An action otherwise would only lead to an anomalous situation as the source of power is not the Cr.P.C. This was so held in Usmanbhai Dawoodbhbai Memon & others v. State of Gujarath⁴⁵. The special statute is enacted for a special purposes and that purpose shall not be defeated. In M.C. Mehta v. Union of India⁴⁶ the Supreme Court observed that granting a stay in a petition under section 482 Cr.P.C., and allowing the matter to remain for a long time would be an abuse. Ordinarily no stay should be granted. Even if, an order of stay is granted, in an extra-ordinary case, the High Court should dispose of the case within a short period. Here the issue involved was the problem of pollution of the water in the river Ganga. In the said case, the seriousness of the issue is reduplicated by the fact that the stay granted by the High Court acts as an antithesis to the ends of justice.

i. inherent powers not to be invoked on the basis of evaluation of evidence

Inherent powers under section 482 Cr.P.C. are exercised not

⁴⁵. 1988 SCC (Cri) 318.
on the basis of any evaluation of evidence.\textsuperscript{47} The High Court looks at the complaint and examines whether the Magistrate was correct in forming an opinion. In \textit{State of Bihar v. Raj Narayan Singh},\textsuperscript{48} again, the Supreme Court pulled up the High Court for making conjectures. Nor can inherent powers be invoked for an action amounting to review, because, it is barred under section 362 of the Cr.P.C.\textsuperscript{49} The Supreme Court considered the matter related a process issued by the Magistrate to the accused who are alleged to have solemnized the 2nd marriage, during the subsistence of earlier marriage. In \textit{Smt. Chand Dhawan v. Jawahar Lal \& others}\textsuperscript{50} it was held that High Court should not have exercised its powers, while the Magistrate had issued process after considering the facts.

j. attitude towards matters at the threshold

Another situation which the Supreme Court has come across in the matter of inherent power is the attitude of the High Court to matters which are at the threshold. In \textit{M/s Jayant Vitamins Ltd. v. Chaitanya Kumar},\textsuperscript{51} the Supreme Court held that the High Court was not justified in quashing the investigation which was still on its way. Without any compelling justifiable reasons, the High Court shall not throw a spanner in the works of the police and the State Government. In \textit{The Janatha Dal v. H.S. Chowdhary \& others}\textsuperscript{52}, the Supreme Court castigated the High Court over

\textsuperscript{47} Supra n. 26. See ch. VI.
\textsuperscript{48} AIR 1991 SC 1308
\textsuperscript{49} \textit{Simrikhia v. Dolly Mukherjee}, AIR 1990 SC 1605. See ch. VI
\textsuperscript{50} AIR 1992 SC 1379.
\textsuperscript{51} AIR 1992 SC 1930.
\textsuperscript{52} AIR 1993 SC 892.
deviating from the path of the judicial discipline and sobriety in the exercise of the inherent powers. A judge of the High Court has exhibited hideous rashness in the exercise of the inherent powers. The court took *suo-motu* cognizance after referring to sections 119, 397, 401 and 482 of the Cr.P.C. The office of the High Court was directed to register a case under the title *Court on its own motion v. State and C.B.I* and the High Court Judge further ordered the C.B.I. and the State to show-cause why proceedings initiated against the accused be not quashed, which were pending in the court of special judge, Delhi. The Supreme Court castigated the High Court Judge in a very stern and serious language, because the High Court judge had gone on private thinking and personal prejudices. It was an extreme act on the part of the High Court Judge to take judicial notice of illegality committed by a court. Here also investigation was only at the threshold. The High Court judge ought not have taken *suo-motu* proceedings and cognizance with the matter. By doing so, he virtually stepped into the shoes of the accused parties.

The decision in *The Janata Dal v. H.S. Choudhari & others*,\(^{53}\) offered the Supreme Court a situation where a High Court should be at its worst in invoking the inherent powers. *In Dharampal v. Smt. Ramshri & others*\(^{54}\) the Supreme Court reiterated that power under section 482 Cr.P.C. is not applicable for a second revision as section 397(3) of Cr.P.C. specifically bars a second revision. The order of the High Court was reversed. Similarly in *Govindamma v. Veluswami & another*,\(^{55}\) the Supreme Court con-

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54. AIR 1993 SC 1361.
55. AIR 1994 SC 751.
sidered the exercise of inherent powers in a case where the aggrieved party had its relief before the Civil Court. The rights of the family members in respect of the properties of a temple cannot be adjudicated in the forum of Criminal Courts. In the interest of justice, the High Court ordered Police protection to the aggrieved person with a direction to the lower court to dispose of the matter within a time-frame.

In *Moti Lal v. State of Madya Pradesh*\(^{56}\) the Supreme Court reiterated the declared stand on the inherent powers under section 482 of Cr.P.C. vis-a-vis, the bar of review under section 362 of Cr.P.C.

In *State of West Bengal v. Mohammed Khalid & others*,\(^{57}\) it was held that interference during investigation is not under inherent powers but under the Constitution of India. But, this view was already modified in the light of Supreme Court's own decision in *Pepsi Foods Ltd. v. Special Judicial Magistrate & others*\(^{58}\), that a petition under Article 226/227 is as good as one under section 482 Cr.P.C. and that nomenclatures are immaterial. This position distinguished the stand taken in *State of Himachal Pradesh v. Pirthi Chand*.\(^{59}\)

The decision in *Pirthichandh's case* is not as much an explanation of the jurisdiction of the court under Article 226/227 and section 482 of the Cr.P.C. The attention of the Supreme Court is centered around, the correctness of the High Court's decision to

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56. AIR 1994 SC 1544.
57. AIR 1995 SC 785.
58. 1998 SCC (Cri) 1400.
59. AIR 1996 SC 977.
interfere with the investigation. In *State of Maharashtra v. Eswar Piraji Kalpatry*\(^{60}\) the Supreme Court considered this interference of the High Court under Section 482 Cr.P.C. in a normal trial proceedings. If trial is disrupted with inherent powers, that itself is an abuse of the process of the court. In the instance case, F.I.R. was lodged and the Government of Maharashtra has accorded sanction and charge sheet was filed. According to the Supreme Court, the accused was rightly prosecuted. High Court could not say that there was lack of application of mind, when the F.I.R. was prepared and the sanction of the Government obtained.

In cases like *Krishnan v. Krishnaveni*,\(^{61}\) *Pepsi Foods Ltd. v. Special Judicial Magistrate & others*,\(^{62}\) and in *State of Kerala v. O.C. Kuttan*,\(^{63}\) the Supreme Court has placed the law in a very crystal clear position. In *Krishnaveni*’s\(^{64}\) case, inherent powers have been placed at a higher pedestal than the revisional powers. So far as, inherent powers of the High Court are concerned, this was a historic necessity. Ever since, section 397 Cr.P.C. 1973 was enacted, inherent powers under section 482 Cr.P.C. suffered an eclipse and was prevented from being fully exploited for securing the ends of justice. In *Krishnan v. Krishnaveni*\(^{65}\), the Supreme Court resolved ambiguity in the revisional Jurisdiction and the inherent jurisdiction. In this decisions the Supreme Court re-

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60. (1996) 1 SCC 542.
61. AIR 1997 SC 987. See ch. VI.
62. Ref. supra n. 58
63. 1999 (1) KLT 747 SC
64. Ref. supra n. 61
65. Ibid.
lied on the decisions in Madhu Limaye's\textsuperscript{66} and V.C. Shukla's\textsuperscript{67} cases and distinguished the decision in Manchanda case\textsuperscript{68}.

In section 482 Cr.P.C. inherent powers cannot be extended to the appreciation of facts.\textsuperscript{69} Interference on facts means appreciation of evidence. The High Court from such a distance from the trial court unaccompanied by opportunity to appreciate evidence cannot comment on facts.\textsuperscript{70} While extending the authority under section 482 rather than application of hard and fast rules, prudence and equity are to be guide to the conscience of the High Court.\textsuperscript{71}

The Supreme Court was of the opinion that the High Court can interfere in the interest of justice and give positive directions. Similar is the position of the High Court treading in the territory of civil jurisprudence invoking inherent powers. The High Court is not to invoke inherent powers to settle a civil dispute of partition of immovable property which has nothing to do with a complaint filed by one of the parties, regarding forcible removal of the movable articles. It is not a ground for invocation of power under section 482 Cr.P.C. In \textit{A.E. Rani v. V.S.R. Sarma and others},\textsuperscript{72} the Magistrate took cognizance of offences under section 380 IPC in respect of forcible removal of immovable articles. The High Court quashed the complaint, on the assumption that it in-

\textsuperscript{66} AIR 1978 SC 47  
\textsuperscript{67} AIR 1980 SC 962  
\textsuperscript{68} 1990 Supp. SCC 132  
\textsuperscript{70} \textit{State of Bihar v. Murad Ali Khan \& Ors.} : 1989 SCC (Cri.)27  
\textsuperscript{72} (1995) 1 SCC 627.
volved a question of civil nature. The Supreme Court was of the opinion that the High Court's action was not justified as forcible removal of movable articles form the special nature of the criminal complaint, notwithstanding civil dispute in respect of immovable property. That appreciation of evidence is barred while invoking power under section 482 Cr.P.C. is a well accepted principle.

Powers under section 482 Cr.P.C. have great impact as it can eradicate a criminal case pending before a subordinate court. Restraint, reticence, and reasons are to guide the High Court while invoking the powers to quash a proceedings pending before the trial court. This was so held by the Supreme Court in Maninder Kaur v. Rajendra Singh and others. Here the Court declined to invoke power under section 482 Cr.P.C., in an offence charged under sections 363, 366, 367 of IPC. The Supreme Court while setting the tune for the High Courts to play the magic wand of inherent power under section 482 Cr.P.C. insists as much on dispassionate and objective approach.

An appraisal of the charge-sheet and supporting material is not always excluded. This is not appreciation of evidence. This is only an examination of the materials available before the Magistrate, for taking cognizance of the offence. The Magistrate has to decide whether allegation made in the charge-sheet with supporting materials can be apprised. The case Keshub Mahindra v.

74. 1992 Supp (2) SCC 25.
State of Madhya Pradesh\textsuperscript{76} involved Bhopal Gas Tragedy and the offences were under sections 229, 304(2), section 321, 322, 324, 326 and 429 of I.P.C. In such circumstances, the Supreme Court examined the dynamics of power under section 482 Cr.P.C. and extended in the light of similar powers available under Article 136 and 142 of the Constitution. Power under section 482 Cr.P.C. is discussed in the light of the power of the Magistrate under section 227 and 228 of the Cr.P.C. The High Court of Madhya Pradesh at Jabalpur dismissed the petition under section 482 Cr.P.C. The Supreme Court under Article 136 while considering the Special Leave Petition discussed the ramifications of the case and partly allowed the prayers of the petitioners. The court dilated on contingency under Indian Constitution where power is conferred on the court to secure the ends of justice, as in the case of Article 136 and 142 of the Constitution. Reference was made to a number of decisions of the apex court.\textsuperscript{77}

Opportunities made available to the High Court and the Supreme Court in the context of application of inherent powers under section 482 Cr.P.C. traverse legislation and offences civil, criminal, corporate, and constitutional. This rests upon the principle of equity, which permeates the power under section 482 of Cr.P.C. A case with a high degree of equity element can be one where the High Court failed to appreciate the existence of equity and the Supreme Court sees through the reasonings of the High Court and records of the case. In Captain Subash Kumar v. Prin-

\textsuperscript{76} (1996) 6 SCC 129.

cipal Officer, Mercantile Marine Department, Madras,\textsuperscript{78} section 363 of the Merchant Shipping Act, had been examined. This does not mean that High Court is to read equity at all circumstances. This will result in meddling with the prosecution. The High Court is not to interfere with the reasonable opportunity of the prosecution, to substantiate the allegations of the case. This point was discussed in Eastern Spinning Mill v. Rajiv Poddar.\textsuperscript{79}

On equity, the stream of justice can be controlled and coordinated under section 482 Cr.P.C. A transaction purely of civil nature cannot constitute the subject matter of a prosecution under criminal law. In Balakrishna Das v. P.C. Nayar \textsuperscript{80} action was initiated under section 406 IPC. The agreement was for procuring foodgrains for the Food Corporation of India. There was shortage in the quantity. There was also an arbitration agreement which covered the contract. The Supreme Court held that the matter was of civil nature and the High Court rightly quashed the complaint. So power under section 482 Cr.P.C. is not available to settle dispute of civil nature. The criminal courts are not made the fora for settling civil disputes and in such cases, power under section 482 Cr.P.C. is invoked to quash the proceedings leaving the parties to the choice of appropriate forum instead of stifling the ends of justice. The High Court is to exercise great care and caution and nothing is to be assumed, No conjecturers, no assumption, no deeming, no preponderance of probabilities while dealing with a case under section 482 Cr.P.C. If an offence under

\begin{itemize}
\item \textsuperscript{78} (1991) 2 SCC 449.
\item \textsuperscript{79} 1989 Supp (2) SCC 385. Also see State of Bihar v. Raj Narain Singh, 1991 Supp (2) SCC 393.
\item \textsuperscript{80} 1991 Supp (2) SCC 412.
\end{itemize}
section 496 IPC is the allegation in the complaint, and the Magistrate is of the view that there is prima-facie case, the High Court is not to embark upon its own chartered course to correct the Magistrate. In Chant Dhavan (Smt.) v. Jawaharlal and others, the High Court relied on additional material, to quash the complaint. Such material was not admitted or executed by the complainant. No opportunity was given to the complainant to rebut the veracity of the material. Still the High Court quashed complaint and criminal proceedings before the Magistrate. This attitude is not in consonance with the allowed latitude of the inherent powers and the Supreme Court held that the High Court's decision was not justified, because the High Court assumes certain things which are not revealed by the complaint. The High Court reached the territory outside the inherent power. This shows that graver the power, the more cautious the High Court ought to be.

"No inflexible guidelines or rigid formulae can be set out and it depends upon the facts and circumstances of each cases, where no such power should be exercised. High Court is asked to travel through a bridge in the course of administration of justice where there is no railings to hold on. If the High Court errs patently, the Supreme Court is there to correct, but the attitude of the Supreme Court while reversing the decision of the High Court on the onehand and deciding partly in favour of the accused on the otherhand, is inscrutable. The quashing of a complaint

for offences under section 484, and 107 IPC by the High
Court is set aside by the Supreme Court, saying that High
Court erred in quashing the complaint. But, the Supreme
Court in the same instance says that the proceedings for
offences under section 107 IPC need not be continued.83

From the reasoning of the Supreme Court it is seen that High
Court failed to see through the necessity of the proceedings for
offences under section 474 IPC and the redundancy of offences
under section 107 IPC. This shows that power under section 482
Cr.P.C. apparently negative an destructive, meant for quashing
and curbing, has got positive dimension where ends of justice
can be secured by severing the offences which are clubbed to­
gether in a single proceedings. So even with regard to the inher­
ent powers of the High Court under section 482 Cr.P.C. the final
arbiter is the Supreme Court. But, even the Supreme Court is
under law. It cannot arrogate a jurisdiction to itself. This is evi­
denced by the decision in Supreme Court Bar Association v.
Union of India.84

Under law, Bar Council is vested with the power to adjudicate
the professional misconduct of lawyers. The Supreme Court in a
collateral way cannot adjudicate upon the conduct of a lawyer.
Punishing the contempt of court is the court's prerogative. This
is because, power of the Supreme Court under Article 129 is ex­
clusively a prerogative to protect the majesty and the prestige of
law. Article 142 contains a rare species of power to the Supreme
Court to do complete justice. This constitutional imperative can­

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83. Ref. supra n. 51
84. AIR 1998 SC 1895.
not be used to assume jurisdiction where none existed.

When a lawyer commits contempt of the High Court, it is contempt of a Court of Record. Quoting Master Jacobs the Supreme Court said:

"The power that courts of record enjoys to punish contempt is part of their inherent jurisdiction. The juridical basis of the inherent jurisdiction has been well described by Master Jacob as being the authority of the judiciary to uphold, to protect and to fulfill the judicial functions of administering justice according to law in a regular orderly and effective manner". 85

This power is not derived from statutes, nor is it a common law cannon, it contributes to the flow of justice caused by the very concept of law. Punishment of contempt is a part of inherent jurisdiction. The Supreme Court has an inherent superior jurisdiction. A three Judges Bench of the Supreme Court held in Re Vinay Chandra Mishra's case, 86 that an advocate guilty of criminal contempt in obstructing the course of justice is liable to be punished for the contumacious conduct. So the court is constrained to invoke power under Articles 129 and 142. Contemner is punished with imprisonment. He is also punished with suspension of practice as advocate. Consequently, all posts held by the advocate stood vacated there at. The Supreme Court has thus reached areas of nonexisting jurisdiction. The Supreme Court corrected itself in Supreme Court Bar Association case 87. The

85. Id. at p. 1896.
87. Supreme Court Bar Assn. v. Union of India. AIR 1998 SC 1895.
power under Article 142 is to do justice in a case pending before
it. The issue of professional misconduct, was never a pending
matter before the Supreme Court. Power is given to the Bar Coun-
cil to consider the aspect of professional misconduct. The Su-
preme Court has gracefully accepted this contention and cor-
rected itself. Inherent jurisdiction does not include jurisdiction to
usurp powers of statutory bodies like the Bar Council. What the
Supreme court could have done at the first instance itself was to
refer the matter to the Bar Council for appropriate action. Instead,
the Court had assumed the role of the Bar Council. That is done
under the special jurisdiction of Article 142\(^{88}\). The scope of the
power of the Supreme Court under Article 142 vis-a-vis the power
of the High Court under has been elaborately discussed in A.R.
Anthulay's\(^{89}\) case. The contempt jurisdiction while underlining the
special plenary power of the Supreme Court and High Court had
its own peculiar quality as explained by the Supreme Court and
corrected through the Supreme Court Bar Association v. Union
of India\(^{90}\).

In the above paragraphs the attitude of the Supreme Court
towards the application of inherent powers by the High Court is
explained. Now, based on the above exposition of the inherent
powers as contained in the decisions of the Supreme Court the
performance of the High Court is to be assessed.

A magistrate while taking cognizance of an offence is open-
ing the vistas of prosecution to the accused. The Magistrate is
discharging a grave and sensitive function. His duty is to give

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88. Article 142 (1) empowers the Supreme Court to do complete Justice.
89. AIR 1992 SC 1701.
90. AIR 1998 SC 1895.
optimum consideration to all relevant factors. While initiating pro-
cceedings in a complaint the Magistrate has to conform to the
requirements of the provision in Section 200 of the Code of Crimi-
nal Procedure. The provisions are mandatory and not discretion-
ary. In Mac Culloch v. The State and Another\textsuperscript{91} the Calcutta High
Court held that a nonconformity to the provision of section 200
Cr.P.C. by the Magistrate will be a non-conformity to the proce-
dure established by law. The court quashed the proceedings ini-
tiated by a complaint alleging offences under sections 147, 323,
341, 448, 504, 427 and 506 of I.P.C. It was held that the intention
of the legislature was to give effect to the protection of the ac-
cused persons against unwarranted complaints. So here, a fail-
ure to adhere to the import of section 200 of the Procedure Code
by the Magistrate, justifies interference by the High Court. Insuf-
ficiency of averments and allegation made in the complaint can
also prompt the High Court to exercise inherent powers. In K.
Narayana Swami and another v. P.N. Viswanathan and another,\textsuperscript{92}
the Madras High Court quashed the proceedings in respect of
one accused only. The complaint alleged offences under section
420 IPC. The High Court held that there was no averment in the
complaint to the effect that the accused indulged in any conspiracy
or intentionally aided the act of cheating. The High Court relied
upon the monumental decision of the Supreme Court in R.P.
Kapoor v. State of Punjab\textsuperscript{93}. This decision of the Supreme Court
contains an annotation of the inherent power of the High Court.

\textsuperscript{91} 1974 Cri.L.J. 182 (Cal.)
\textsuperscript{92} 1974 Cri.L.J 1524 (Mad.)
\textsuperscript{93} 1960 Cri.L.J. 1239.
The factor which should weigh with the High Court is the ends of justice. Relying on the above decision of the Supreme Court, the Karnataka High Court in *R.R. Diwakar and others v. B. Guttal*[^94] held that it is open to the High Court to exercise inherent power even without the petitioner invoking the same. The court held, quashing a proceedings alleging offence under sections 465, 471 IPC, if no fraud or dishonesty is made out warranting conviction, the High Court could set aside the order under challenge. This could be done even sitting in revision. Demands of justice are put above technicalities of proceedings.

While judging a case the adjudicating person must show great reticence and equipoise. The judgment shall not be a repository of unnatural comments and remarks. When comments are directed against persons who are not before the court the degree of arbitrariness is enhanced. A Division Bench of the Himachal Pradesh High Court in *M/s. Dr. M.L. Ahuja and others v. The State of Himachal Pradesh*[^95] expunged the remarks of the sessions court on the doctors who have conducted the post mortum.

In *Anujaram Parhi v. State of Orissa*[^96] the petition was to expunge remarks in the judgment against the Doctor. Court had followed the decision rendered by the Supreme Court in *State of U.P. v. Mohammad Naim*,[^97] that the High Court can exercise inherent jurisdiction to expunge adverse remarks either made by itself or by an inferior court. Court may do so to prevent abuse

[^94]: 1975 Cri.L.J. 90.
[^95]: 1975 Cri.L.J. 330 (H.P)
[^96]: 1989 Cri.L.J. 447 (Ori.)
[^97]: AIR 1964 SC 703.
of the process of court or to secure the ends of justice although
the matter has not been brought before it in regular appeal or
revision. If any remark in the judgment affects the person against
whom it is made, the court must refrain from making so.\textsuperscript{98} C.K.P. Assankutty v. State Kerala\textsuperscript{99} the High Court expunged the remarks,
made by the Magistrate against the petitioner, who was the coun-
sel appearing for the 1st accused. A counsel cannot be blamed
for the statement made by his client for getting the benefit under
the enactment. The counsel has a duty to bring out the circum-
stances which entitle his client to get the benefit of enactment.
The tests to be adopted for expunction of remarks discussed by
the High Court relying on the earlier decisions of the Supreme
Court.\textsuperscript{100} Ghuraiya alias Rohini Baiswar v. State of M.P.\textsuperscript{101} it was
held that court is empowered to make remarks against an inves-
tigating officer while appreciating evidence. The court must be
however circumspect in making such remarks. The proper course
in such cases is to refer the action of the investigating officer to
the competent authority for disciplinary enquiry rather than mak-
ing adverse comment against him. Himachal Road Transport Cor-
poration v. State of Himachal Pradesh.\textsuperscript{102} the remarks made by
the trial judge were such that if omitted there was no effect of
crippling the judgment. But allowing them to exist has the effect
of condemning a person without affording an opportunity of ex-

\textsuperscript{98} AIR 1940 (Lah.) 82
\textsuperscript{99} 1990 Cri.L.J. 362 (Ker.)
\textsuperscript{101} 1990 Cri.L.J. 1129 (M.P)
\textsuperscript{102} 1990 CRI.L.J. 1156 (H.P)
plaining and defending himself which is against the canons of justice and fair play. The High Court expunged the remarks from the judgment. In B. V. Naik v. State of Karnataka\textsuperscript{103} the court while convicting the accused on the basis of evidence before it made certain uncalled for remarks about the honesty and integrity of a police officer. The Police officer was not having any opportunity to meet those remarks. So the remarks were expunged.

In certain cases observations and comments are drastic and vituperative. In Javadhi Sesha Rao v. State of A.P.,\textsuperscript{104} in a murder trial, because of the personalities involved and notoriety of accused as well as deceased, investigation could not be completed swiftly and all evidence could not be brought to light. The remarks of the trial Judge against investigating officer that accused were falsely implicated by him at the instance of some Ministers and that he was guilty of sections 193 and 196 IPC were held \textit{ipso facto} unjust. The remarks were based on testimony of witness who turned hostile. Such remarks stigmatise the conduct of investigating officer and the same were directed to be expunged. The irony is that the High Court also is found to be violating this basic norm of justice. In a petition under section 482 Cr.P.C. to expunge remarks by the High Court against a sessions judge, the High Court dismissed the petition. In Kashi Nath Roy v. State of Bihar,\textsuperscript{105} the Supreme Court allowed the appeal and expunged the remarks. The High Court made adverse comments against a session judge for granting bail on the ground of

\begin{itemize}
  \item \textsuperscript{103} 1992 Cri.L.J. 3441 (Kar.)
  \item \textsuperscript{104} 1995 Cri.L.J. 897 (A.P)
  \item \textsuperscript{105} (1996) 4 SCC 539.
\end{itemize}
an infirmity in evidence in the criminal trial. The Supreme Court held that it was not a glaring mistake or impropriety so as to attract adverse remarks and disciplinary action.

In *Dr. I.B. Gupta v. State of U.P.* the Supreme Court allowed the appeal by expunging the adverse remarks made by the High Court against a doctor. The High Court observed that a doctor was not fit to be retained in Government service while discussing the evidence in appeal in connection with the investigation of a murder case. It was held that observation amounted to condemning the doctor without being heard. The Supreme Court had a number of opportunities to consider the scope of inherent powers in this area. In *Dr. Raghubir Saran v. State of Bihar & another,* the Supreme Court considered the inherent powers of the High Court to expunge the adverse remarks made by the subordinate judiciary in their judgments. In this case the order of Munsiff - Magistrate made adverse remarks against the appellant who was not a party to the proceedings. The Supreme Court had categorically endorsed the power of the High Court even holding to the extent that the High Court has inherent power to expunge objectionable remarks in a judgment or order of subordinate court against a stranger, after it has become final, if the interest of the party concerned would irrevocably suffer. The Supreme Court had adverted to the earlier decision diagnosing the inherent power of the High Court in *Emperor v. Khwaja Nazir Ahmad and Jai Ramadas v. Emperor.* Probably the most com-

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106 1994 SCC (Cri.) 691.
107 AIR 1964 SC 1
108 AIR 1945 PC 18 & AIR 1945 PC 94
prehensive views of the Supreme Court are contained in the decision in *State of Uttar Pradesh v. Mohammad Naim*\(^{109}\). The Supreme Court enumerated the categories of circumstances which would ordinarily be ideal for the High Court to use the inherent power. In *The State of Assam v. Ranga Muhammed & others\(^{110}\)*, the Supreme Court had to consider the remarks made by the High Court against the State in the matter of consultation with the High Court regarding transfer of district judges. While discussing the generality of the powers the Supreme Court held that inherent power to expunge remarks is an extra-ordinary power and can be exercised only when a clear case is made out. The question to be considered is not whether another judge would have made those particular remarks but whether the Judge in making those remarks has acted with impropriety.

It is thought provoking to see the vulnerability of the High Court in this respect were the High Court itself commits the error of making comments violating the principles of natural justice. In *Jage Ram v. Hans Raj Midha*\(^{111}\) The High Court in a Habeas corpus proceedings made adverse remarks against police officers. The Supreme Court held that for expunction of remarks made in a judgment, it is necessary that remarks must be such as can be described as unwarranted, unnecessary or irrelevant or can be characterised as generalisation or of a sweeping nature. The court had followed the dictum laid down in *State of U.P. v. Mohammad Naim*\(^{112}\).

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\(^{109}\) AIR 1964 SC 703.  
\(^{110}\) AIR 1967 SC 903.  
\(^{111}\) AIR 1972 SC 1140  
\(^{112}\) AIR 1964 SC 703
In spite of the above exhortations of the Supreme Court the High Courts are prone to go at a tangent. In *State of Maharashtra v. Ramesh Narayan Patil*\(^\text{113}\) the Supreme Court considered adverse remarks passed by the High Court against a police officer. The High Court had made observations against a police officer directing the Government to withdraw from his purview certain powers under the Bombay Police Act. The officer repented for the faults on his part and tendered unconditional apology. He also had undertaken to assure that recurrence of mistake will be avoided. The Supreme Court accepted the apology and remarks were expunged. In *State of Maharashtra v. Dr. Budhikota Subbarao*,\(^\text{114}\) the High Court made adverse comments against the State and Public Prosecutor while deciding the case. The ire of the High Court was in respect of the charge-sheet. The main issue in this case is not in respect of quashing the charge sheet. The propriety of a Judge of the High Court in deciding the case by making adverse remarks against the Public Prosecutor and State is held wrong by the apex court. In *K.P. Tiwari v. State of Madhya Pradesh*\(^\text{115}\) adverse remarks were made by High Court in its judgment against a District Judge. The High Court while passing an order of reversal of the lower court's order granting bail to accused persons in a case, observed in an adverse manner against the judge personally. Remarks were made about interestedness and motive of lower court in passing an unmerited order. This practice was deprecated by the Supreme Court for making remarks in judgment which are improper and expunged.

\(^{113}\) AIR 1991 SC 1722.

\(^{114}\) (1993) 3 SCC 339.

\(^{115}\) AIR 1994 SC 1031.
the remarks as it would downgrade judiciary.

In *Pammi alias Brijendra Singh v. Government of Madhya Pradesh*\(^{116}\) the High Court made adverse remarks on a Sessions Judge while reversing an order of acquittal. In the appeal by the accused it was held by the Supreme Court regarding the adverse remarks while dealing with orders of lower courts. According to the Supreme Court the High Court should have avoided unsavory remarks against a judicial personage of the lower hierarchy. The paradox is that the High Court which is having the inherent powers to secure the ends of justice oversteps its limits to defeat the ends of justice. Sometime the rashness of the High Court judge transcends the limit of all sense of scruples. A case to the point is *State of Rajasthan v. Prakash Chand and others*\(^{117}\). Adverse comments were made by a single judge of Rajasthan High Court against the Chief Justice and other judges of the High Court while deciding a criminal revision petition. Notice of contempt also was directed to be issued to Chief Justice. The Supreme Court rose to the occasion to open a few lessons in decorum and propriety to the High Court judge. Intemperate comments and disparaging and derogatory remark by single Judge against Chief Justice and brother judges, is a case of lack of judicial restraint and amounts to abuse and misuse of judicial authority and betrays lack of respect for judicial institution. The consternations felt by the Supreme Court was due to the comments

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117. AIR 1998 SC 1344.
in respect of drawal of daily allowance for residence by Judges of the High Court. They were factually and legally incorrect, and the same were liable to be quashed and expunged. The Judge while making such comments exceeded all restraints, judicial probity and authority and seemed to be reckless in his manner by assuming powers that are not vested with him.

In *Kesava Panicker v. State*\(^ {118}\) it was held that the remarks were unnecessary. It was held by the Travancore-Cochin High Court that the High Court can expunge remarks in a judgment of a court subordinate to it, when the words objected to are not relevant to the case and are of a scandalous or very improper nature. The High Court acts under this power to judicially correct the subordinate judges. The rule laid down in this case state the law clearly. The court also relied on several decisions holding the field.\(^ {119}\) In *Persy Gerala Papali v. Abraham*\(^ {120}\) expunging the remarks the High Court held that language employed in judgments to be sober, restrained and dignified. Aspersions are not to be cast on the character of any person unless necessary for proper disposal of case and is arranged by the evidence. A farsighted and visionary view is held by the Kerala High Court in *Jayaraja Menon v. K. Gheevarghees*\(^ {121}\). It was held that if the remark is made against a person who is not a party and if such a remark is unjustifiable or if it does not form the main fabric of the judgment, or that it is separable and is irrelevant or where the attack

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118. 1954 KLT 329 (T.C)
119. AIR 1927 All 193; AIR 1953 Bom. 152. AIR 1954 Bom. 65; AIR 1928 Lah. 740. AIR 1939 Lah. 174; AIR 1944 Mad. 320.
120. 1963 KLT 312.
121. 1972 KLT 691.
will harm the reputation of a person or affect him officially or jeopardize his means of livelihood, then the High Court can interfere. For such effective interference a cogent case must be made out. Sometimes the remarks may require to form a part of the judgment. In *Sujatha v. State of Kerala*\(^{122}\) the Kerala High Court considered the question whether the officer whose judgment/order is criticised, needs to be heard. It was held that only when there is personal remarks against the officer concerned, she/he must be heard. Otherwise, the remarks can be taken on part of judicial function. Adverse remarks when it is an integral part of the judgment, without which the conclusion cannot be reached, prayer for expunction cannot be allowed.

Interference by the High Court against adverse remarks in the lower courts judgment is not as a matter of course. Since the inherent jurisdiction itself is guided by consideration of equity here also discretion plays a definite role. If remarks are not wholly irrelevant or unjustifiable the applicant does not get the benefit of inherent powers. In *G.S. Shekhar v. State of Himachal Pradesh*\(^{123}\) the remarks against the witness in the judgment were held to be not under any exceptional circumstances. Inherent jurisdiction could not be used. If an authority does something not authorised by law the official would not get protection of inherent jurisdiction. In *State of Orissa v. Raghunath Jena & others*\(^{124}\) the Magistrate made certain remarks against the excise superintendent. The excise authorities seized goods not authorised by law. The ac-

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122. 1989 (1) KLT 177.
123. 1976 Cri.L.J. 95 (H.P)
124. 1978 Cri.L.J. 1059 (Ori.)
tion was irresponsible enough to invite mild comments in a judicial order. It cannot be treated as objectionable and hence not warranting interference of the High Court on the ground of securing the ends of justice.

The strictness with which the court views the gravity of inherent powers is evident when it declined to interfere. The High Court imposes restraint to the extend of its own inherent powers. In *S. Nachimuthu Gounder v. Chellamma & others*\(^{125}\) it was held that on facts inherent powers could not be exercised. Nor do the observations made by criminal court bind on civil court adjudicating a connected proceedings. It was also held that a civil suit was not barred by any observation made in a criminal case and it is for the civil court to try the issue before it and to come to an independent conclusion of its own decisions on the available materials placed before it. In the impugned observations the view has been expressed by the judge as the facts prima facie appeared to him. Therefore, the judge had not finally determined the issue regarding the facts of the case pending before the civil court. Also, the High Court after testing the impugned the observation against the authoritative judicial pronouncements\(^{126}\) held that those observations would not fall under any exceptional category so as to enable the High Court to invoke inherent powers.

If the malfunctioning of a judicial officer is commented upon by the High Court the former has no right to get a clean chit. In *Intelligence Officer, Narcotic Control Bureau v. Kamruddin Ahmad*

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125. 1977 Cr.L.J. (NOC) 90 (Mad.)
126. 1964 Cr.L.J. 549 SC; AIR 1951 Mad. 344; AIR 1935 Mad. 429; AIR 1966 Mad. 425.
Shike & another\textsuperscript{127} the High Court considered the expunging of objectional matter from the record. Gross error was committed by the subordinate court in passing certain order in favour of the accused in a case under NDPS Act. Similar gross error was committed by that court earlier also. The High Court observed that it was yet another extraordinary order passed by the same judge and that it had shown total non-application of mind and was wholly perverse. It was held that High Court was only performing its duty to point out the error in the approach of the subordinate court and to sound a word of portion. It was also held that observation did not amount to adverse strictures and did not warrant expunction.

In Assankuty v. State\textsuperscript{128} the High Court had an occasion to consider the lack of ethics in the conduct of the proceedings. In a Food Adulteration case the same counsel appeared for vendor and manufacturer. The vendor's case was that there was a Warranty and the same was said to have been entrusted to the counsel. The counsel did not produce the same. The vendor was convicted. In appeal the case was remanded. After remand, the accused gave evidence against the former counsel at the instance of the latter counsel. The court criticises the later counsel for the Impropriety and expunged the remarks. This was because the remarks made by the Magistrate against the counsel was never needed for the decision of the case. Judicial pronouncements must be judicial in nature, having the required sobriety, moderation and reserve. The court quoted from the Supreme Court de-

\textsuperscript{127} 1994 Cri.L.J. 1069 (Bom.)
\textsuperscript{128} 1990 (1) KLT 207
cision in *State of U.P. v. Mohammad Naim*.  

Interest of justice is not a mirage. It is to be realised through responsible interaction with the situation. Similar to the quashing of adverse remarks is the applications of inherent powers at the investigation state of a case. Quashing an F.I.R. or interference by the High Court when the investigation is still on is normally not done. But, if ends of justice demands that if the investigating agency is allowed to continue with the investigation and harass a citizen on the strength of an FIR which does not disclose a cognizable or non-cognizable offence, then the High Court shall not be shy to press into action its inherent powers. The Punjab and Haryana High Court in *M/s Balwant Sing v. District Food and Supplies Controller and another* quashed the proceedings alleging violation of clauses 9, 10 and 11 of the Punjab Control of Bricks Supply Order 1972. The Court relying on the Privy Council decision in *Emperor v. Nazir Ahammed* held that in the interest of justice inherent powers could be exercised even at the stage when only an FIR is lodged with the police. Interference with investigation without compelling reasons is not admitted. Investigation is a Statutory function of the police supervised by the Government. In *M/s. Jayant Vitamins Ltd. v. Chaitanya Kumar and another*, the Supreme Court found fault with High Court in quashing the investigation. Investigation against the accused under sections 420, 408 read with 34 of IPC was quashed by the High Court

129. AIR 1964 SC 703.
130. 1975 Cri.L.J. 687 (P&H).
131. AIR 1945 PC 18.
132. Refer also Veeramani and others *v. Superintendent of Police, Dharmapuri and others*, 1977 Cri.L.J. (NOC) 109 Mad.
133. 1992 SCC (Cri) 793.
in a number of cases.\textsuperscript{134} In \textit{Mrs. Rita Wilson v. State of Himachal Pradesh}\textsuperscript{135} FIR lodged by a judicial officer for not permitting his car to be parked inside a school premises wherein his wife worked. The Magistrate ordered to take into custody the gate, key and chain for investigation. The High Court quashed the FIR, which otherwise would have led to a frivolous proceedings. For investigation there must be reasonable suspicion of offence. If offence is not made out from records proceedings can be quashed. Even though investigation is a territory occupied by the executive, pitted against the interest justice, for securing which the inherent powers of the High Court are saved an FIR does not have sanctity. In \textit{Jitender Mohan Gupta v. State}\textsuperscript{136} the High Court quashed the FIR. The petitioner contended that he was falsely implicated and that FIR did not constitute any offence. The plea of the prosecution that Challan was filed during the pendency of proceedings for quashing FIR was not held sustainable. In \textit{Belala alias Raja v. State of Orissa}\textsuperscript{137} the High Court had to face the grievance of a father alleging the kidnapping of his daughter. The girl was a major and had eloped with the accused out of her own volition. They both got married and were living happily together. No offence was committed. The proceedings initiated only to violate the freedom of the accused. So the High Court quashed the FIR and investigation.


\textsuperscript{135} 1992 Cri.L.J. 2400 (H.P).
\textsuperscript{136} 1992 Cri.L.J. 4016 (Del).
\textsuperscript{137} 1994 Cri.L.J. 467 (Ori.)
In *Mange Ram v. State of Haryana*\(^{138}\) the FIR was lodged against the petitioner for violation of provisions of HDRUA Act. Section 7 of the Act requires licence for advertising sale of a plot in colony. Advertisement made by the petitioner is not in respect of any colony. There was no relationship of property deals with any colony as owner, share holder or proprietor. The FIR lodged by District Town Planner being false and frivolous was held liable to be quashed.

In *M/s Apronto Tools Pvt. Ltd. v. State*\(^{139}\), it was held that by merely filing a complaint and then seeking several adjournments for filing the final report would erode gravity of the procedure. It was a proceedings alleging offences under sections 78 and 79 of the Trade and Merchandise Marks Act, and section 63 of the Copy Right Act, section 420 of I.P.C. The Interim report was submitted by police. The final report was not submitted and several adjournments taken. The petitioner was likely to suffer great lose in case no early action taken. The High Court issued direction to the Magistrate to examine and enquire into case himself for deciding, if there was sufficient ground for proceeding in matter. An FIR registered in violation of the provisions of the Code is liable to be interfered with. In *Paras Ram v. State of Haryana*\(^{140}\) the FIR was quashed. The application under Section 340 and 195 Cr.P.C. was filed before court. Section 340 Cr.P.C. requires an enquiry and a complaint in writing to be made prayer to initiating procedure on the basis of the enquiry. The Court without making enquiry into offence alleged send the said application to police for registra-

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\(^{138}\) 1994 Cri. L.J. 1427 (P&H)

\(^{139}\) 1994 Cri.L.J. 421 (Del.)

\(^{140}\) 1995 Cri.L.J. 1603 (P&H)
tion of a case. The FIR registered in derogation of provision under section 340 Cr.P.C. was held liable to be quashed. Similarly vague and ill-founded allegations in FIR would only further weaken the case. The connected events proved the duplicity of the prosecution. In re. Sankar Gope,\textsuperscript{141} the FIR was filed for offences of cheating and misappropriation. Allegations in FIR were vague and did not make out the alleged offences. The FIR and criminal proceedings were held liable to be quashed. The High Court granted bail to the accused who was in Jail. But he was rearrested in connection with another case without informing the court. It was held illegal and superintendent of Jail was directed to release the accused and report the same to the court. He was also directed to show-cause why criminal contempt should not be initiated. It was also held that compensation be ordered to be paid by him/or by state.

In Banswara Syntex Ltd. and others v. State of Rajasthan and another\textsuperscript{142} the Rajasthan High Court had to consider the investigation proceedings commenced in violation of the notification issued by the commissioner. Proceedings which are being taken against a person under the temporary statute will \emph{ipso-facto} terminate notification which automatically comes to an end. The investigation can be proceeded. To secure the ends of justice, it is expedient and necessary to quash FIR and also the investigation. In this case a notification under clause 16 of the order of 1986 was issued having duration till March, 1995. But the orders has been repealed with effect from 7.12.92 the court considered

\textsuperscript{141} 1995 Cri.L.J. 1358 (Cal)
\textsuperscript{142} 1995 Cri.L.J. 2969 (Raj)
it as a temporary statute which is having no operation after the expiry of the said notification. In *Ravinder Singh v. State of Punjab*\(^\text{143}\) the challenge was against FIR and proceedings. It was held that an offence of criminal conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence. The court also pointed out that only when challan has been put in court, the complaint or FIR should not be quashed and it should be left from the discretion of the trial court. But, in cases were on reading of FIR, if believed in toto, does not constitute any offence, it will be an abuse of the process of court to compel to go through the trial. In *K. Srinivas v. State of Karnataka*\(^\text{144}\) the petitioners were undertaking quarrying operations in certain land. They were proceeded against for alleged contravention of the Mines and Minerals Act. The FIR was lodged by Assistant Superintendent of police who was not competent to exercise powers in view of notification issued by State Govt. Also no material showing that he has been authorised by competent authority to do so. It was held that cognizance cannot be taken on the basis of information lodged by Assistant Superintendent of Police. So the FIR was quashed.

In a matter which is not within the purview of any statute\(^\text{145}\) and with no material to hold one guilty of the offence\(^\text{146}\) or where

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143. 1995 Cri.L.J. 3297 (P&H)
the dispute had already been settled\textsuperscript{147}, there is no meaning in continuing the proceedings. The FIR can be quashed in the interest of justice. In \textit{Indian Association of Lawyers v. State of Andhra Pradesh}\textsuperscript{148} the FIR was filed by police to malign a judicial officer. The High Court while quashing the FIR observed that subordinate judiciary be protected from interference or attack by police authorities. Also the High Court had drawn attention to the general guidelines issued by the Supreme Court in 1994 (4) SCC 687 to be observed by Police when complaint is made against a judicial officer for any offence.

The inherent power is with the court. The general belief is that where interest of justice suffers inherent powers can interfere. Technical questions are not a bar. Viewed from this angle the decision of the Division Bench of the Jammu and Kashmir High Court in \textit{Municipality of Jammu v. Puran Prakash}\textsuperscript{149} fails to carry conviction. In appeal, a Single Judge bench of the High Court reduced the conviction of the accused of offences under section 16 of the Jammu and Kashmir Prevention of Food Adulteration Act, and expunged the remarks in the judgment of the trial court. But, the Division Bench held that it is not the province of the Single Judge to have expunged the remarks made by the trial court against the public analyst. According to the Judges of the Division Bench, it could be done by the High Court while exercising its discretion under inherent powers. The court set aside

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\item \textsuperscript{147} \textit{Mohinder Sing Kosla v. Union Territory, Chandigarh}, 1996 Cri. L. J. 1247 (P\&H)
\item \textsuperscript{149} 1975 Cri. L. J. 677 (J\&K)
\end{itemize}
\end{footnotesize}
the order of the learned Single Judge expunging the remarks. The remarks were held to stand unless expunged on proper application made. This attitude of the court amounts to putting an embargo on the inherent power of the court. If the remarks made are unnecessary to the ends of justice no technique shall dog the High Court's inherent power to expunge the same\textsuperscript{150}. When gross injustice stares at our face even well established rules would give way to inherent power. For instance the normal rule is that inherent powers are not exercised to direct rehearing of an appeal. But, in \textit{Bombay Cycle and Motor Agency Ltd. v. Bhagawan Prasad Ramraghubir Pandey and others},\textsuperscript{151} a Division Bench of the Bombay High Court held that the High Court has the inherent power to make an order that the appeal be reheard in a proper case where there is violation of the principles of natural justices. Order so obtained is an abuse of the process of the court. To secure the ends of justice, it is necessary to rehear the appeal.

k. inherent powers for constructive purpose - necessity of positive judicial thinking

A positive judicial thinking is necessary to use the inherent powers for constructive purpose. The interpretation of the laws are to be checked by the application and vision of Judges who has to exercise inherent powers. For instance, a Division Bench of the Calcutta High Court in \textit{Suprovat Bose v. The State},\textsuperscript{152} held that absence of specific provision should not trammel the foun-

\textsuperscript{150} Ref. supra n.95.
\textsuperscript{151} 1975 Cri.L.J. 820 (Bom.)
\textsuperscript{152} 1976 Cri.L.J. 313 (Cal.)
tain of justice and stand in the way of the court granting relief. This is a positive approach because inherent powers of the court are to be exercised *ex deibo justitiae*. This power is not to be used to override any express provision of the laws or where another remedy is available. But in a situation where the petitioner is entitled to a right but is unable to get a relief and there is no known law by which a relief can be granted, invoking inherent powers of the court will not amount to overriding of any express provision of law. This is because ends of justice is greater than the ends of law. Absence of specific legal provision is no excuse for denying justice. For instance, there is no provision for substitution of names in the procedure Code, also no provision bars substitution. In such situation, the Calcutta High Court held in *Bhupendra Nath Barik v. Brahmachari Giri and others*,¹⁵³ that, the High Court has got jurisdiction to hear the parties to secure the ends of justice.

I. inherent powers available even while exercising a specific statutory power

The inherent powers are there with the court even when the court is exercising a specific statutory power. Therefore, when an appeal is heard by the High Court to meet with unforeseen situations arising out of the proceedings in the court inherent powers could be used. In *Jamshed v. State of U.P.*¹⁵⁴ the Allahabad High Court held that law gives authority to make further enquiry. The matter involved was regarding the taking of blood of the accused and its infraction of Article 20(2) of the Con-

¹⁵³. 1976 Cri.L.J. 552 (Cal.)
¹⁵⁴. 1976 Cri.L.J. 1680 (All.)
stitution. The Court held that Section 367(1) of the Code of Criminal Procedure, gives power to the authorities as well as ancillary power to the High Court in the case of death sentences awarded. To exercise such power and make orders the High Court could apply its inherent powers. The court dismissed the appeal against conviction under sections 294 and 302 of I.P.C. with modification. Thus, the import of the provision is to secure the ends of justice. Formalities and technicalities occupy only a back seat.

In *Jogendranath Biswas v. Nityananda Haldar and others*,\(^{155}\) the Calcutta High Court held that the inherent powers of the High Court could be invoked to treat an application in revision as an appeal when the petitioner wrongly filed a revisional application without preferring an appeal. The inherent power of the High Court is a vast repository of powers. A Division Bench of the Calcutta High Court held in *Biswa Nath Agarwall and others v. The State*\(^{156}\) held that indiscrimination or frequent use of inherent powers to interfere with interlocutory orders would obviously render nugatory the bar put by section 397(2) of the Procedure Code. It is inadvisable to expand the application of inherent powers to areas occupied by specific provisions. The Court had relied on major decisions of the Supreme Court. But, this is not a hard and fast rule. The situation can be made flexible by question of the ends of justice. If the allegation raised in the complaint or the initial deposition does not constitute an offence the High Court should exercise its inherent powers. In *Manoranjan Sinha v. Bishamborial Saboo*,\(^{157}\) the count quashed the complaint filed alleging offences

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155. 1975 Cri.L.J. 1266 (Cal.)
156. 1976 Cri.L.J. 1901 (Cal.)
157. 1976 Cri.L.J. 1622 (Gau.)
under section 420 IPC. The offence alleged was not disclosed either in the complaint or deposition. Therefore, to secure the ends of justice and to prevent the abuse of the process of the court, inherent powers could be exercised.

m. inherent powers to have moderating and tempering effect on criminal justice administration

The inherent powers of the High Court are intended to have a moderating and tempering effect on the administration of criminal justice. The larger object of the power is to prevent the development of any clog on the process of criminal justice administration. The trial magistrates while issuing orders would not be adverting to all relevant factors. This may prejudicially affect one of the parties. A wife is granted maintenance by the Magistrate. Husband files a subsequent application alleging that the wife was not entitled to maintenance because of adultery and remarriage. But, the Magistrate directs the husband to deposit maintenance amount without considering the question of marriage. It is a situation where the scope of inherent powers of the High Court is contemplated to secure the ends of justice. In *Mobinur Rahman v. Bibi Afgana Khatoon*, 158 the High Court upheld the order of the Magistrate and directed the Magistrate to consider the question of maintenance. The Magistrates in their enthusiasm would proceed on fields specifically outside the sphere of criminal justice. When a civil suit is pending in respect of a property the Magistrate shall not pass an order under section 145 of Cr.P.C. (1898) and appoint a receiver. In *Gajpati v. Sardar Uttam Singh* 159 the

158. 1977 Cri.L.J. Nos, 159 (Patna)
159. 1977 Cri.L.J. (NOC) 252 (MP)
High Court held that it was improper exercise of power by the Magistrate. The order of the Magistrate was struck down. Similarly the trial courts are not expected to make innovative strides or to swim against the currents of criminal jurisprudence which are well established. In *State of Maharashtra v. Tukaram Shiva Patil and others,* a Division Bench of Bombay High Court cancelled the bail granted by the Magistrate in a proceedings alleging the offence under section 302 I.P.C. It was held that the High Court could cancel the bail in exercise of its inherent jurisdiction apart from the power under Article 227 of the Constitution. This is over and above the power under Section 439(2) of the Procedure Code.

n. inherent powers superior to the mandate of the specific provision in the code

The magnitude of the inherent powers is superior to the mandate of the specific provision of the Code. One of the well defined positions in the application of inherent powers is that where there are matters specifically covered by provisions of the Code, it does not apply. Another position is that order of interlocutory powers. But, these are not immutable rules. When interest of justice is at stake the High Court would not pay heed to the hiatus of legal provisions. The thinking is that the provisions in section 397(2) Cr.P.C. cannot be accepted as a bar on the High Court exercising inherent powers when serious, exceptional and unusual features in the case brought before the Court warrant

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160. *1977 Cri.L.J. 394 (Bom.)*

161. *Kamal Krishna De v. State and another, 1977 Cri.L.J. 1492 (Cal.)*
such an interference\textsuperscript{162}. In \textit{E. Kunjanbu Nair v. State of Kerala}\textsuperscript{163} the Kerala High Court in exercise of inherent powers quashed an order passed under section 116(3) Cr.P.C. to execute money bond. The order of the Magistrate was without complying with the proviso to the section 116(3) Cr.P.C. This shows that the interest of justice is having precedence over the intricacies of law. In \textit{M/s. Prestolite of India Ltd. v. The Munsiff Magistrate}\textsuperscript{164} the court reiterated that section 397(2) Cr.P.C. does not prohibit the High Court from passing appropriate orders under section 482 Cr.P.C.

The bar under section 397(2) Cr.P.C. is only where/when the court below passes the interim order with proper jurisdiction. The Orissa High Court in \textit{Ranjit Kaur Samanjray v. State of Orissa}\textsuperscript{165} quashed the proceedings under section 107 Cr.P.C. holding that there was no materials to proceed against the accused\textsuperscript{166}.

The inherent powers are meant for overcoming unforeseen hindrances in the judicial process. It is an unusual power to face abnormal situations. So, rules applicable for normal situations may discount the applicability of inherent powers. But, the facts and circumstances of a case may throw up unusually delicate position where justice is feared to suffer. Then as a levelling force the inherent powers descent on the scene.

\textsuperscript{162} \textit{Bhiku Ram v. Delhi Municipality}, 1977 Cri.L.J. 1995 (Delhi)
\textsuperscript{163} 1978 Cri.L.J. 107 (Ker.)
\textsuperscript{164} 1978 Cri.L.J. 538 (All)
\textsuperscript{165} 1978 Cri.L.J. 687 (Ori.)
The Jammu and Kashmir High Court in *Gulam Mohammed v. Hari Chand*\(^{167}\) quashed the orders passed by the Magistrate under section 145 Cr.P.C. This is inspite of the fact that the proceedings under section 145 Cr.P.C. are purely of summary nature and in normal course it would not be interfered with. But, patent irregularity committed by the Magistrate is a solid invitation to the inherent powers of the High Court. The purpose of all procedure is dispensation of justice and any procedure enabling this is permissible unless it is prohibited. The Allahabad High Court in *Mahesh Kumar v. The State*\(^{168}\) set aside the decision of the sessions Court which declined to grant the prayer to convert a Revision petition to Appeal. The Sessions Court could be faulted because the subordinate courts do not have inherent powers. The High Court could fill the void by applying inherent powers. So, inherent powers are not meant only for quashing a proceedings. It is envisaged to give positive direction also. Even where the High Court declined to quash a proceedings a direction could be issued in the interest of justice. In *Maheswari Oil Mills v. State of Bihar*\(^{169}\), Patna High Court declined to quash the proceedings under the Edible oil orders but directed to release the goods.\(^{170}\)

If put to use with vision and imagination, inherent powers can achieve a salutary purpose in criminal justice administration. The success of the application of inherent powers depends on identifying fit cases for its use. This is because, the power once used

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167. 1978 Cri.L.J. 299 (J&K)
168. 1978 Cri.L.J. 390 (All.)
169. 1978 Cri.L.J. 659 (Patna)
destroys the very foundation of the proceedings. Proceedings, which if allowed to continue would jeopardize the interest of justice, are to be quashed by invoking inherent powers. In this respect no law could fetter the Power of the Court. A Division Bench of the Rajasthan High Court in Bhanvar Lal v. Madan Lal\(^{171}\) answered a reference in respect of the power under section 482 vis-a-vis under section 397(2). It was held that the inherent powers of the High Court under section 482 Cr.P.C. is not controlled by section 397(2) in respect of interlocutory orders. The wordings of section 482 establishes this fact. Two provisions relate to the jurisdictions and operate in different fields. Both are independent powers which would not overlap. What is significant is not so much the interlocutory character of the order as the infraction it has on the ends of justice, or the presence of a \textit{prima facie} case.\(^{172}\) There are statutes, the orders passed under which, having no provision for revision. Then also, the bar under section 397(2) can be ignored. In K.P. Bhaskaran v. R. Sen\(^{173}\) the Calcutta High Court set aside the order partly in a proceedings under section 145 (1) of the Merchant Shipping Act. The Act did not provide revision and hence even if interlocutory order is passed inherent powers are not barred. The arbitrary and illegal orders, even if interlocutory in nature, passed by a Magistrate seek refuge under section 397(2) Cr.P.C. In Pranab Kumar Mukherjee v. Yusuf Ali Bhar\(^{174}\) the Calcutta High Court set aside the order of the Magistrate in section 145 Cr.P.C proceedings.

\(^{171}\) 1978 Cri.L.J. 697 (Raj.)
\(^{172}\) Shri Ram v. Thakurdas, 1978 Cri.L.J. 715 (Bom.)
\(^{173}\) 1978 Cri.L.J. 1493 (Cal.)
\(^{174}\) 1979 Cr.L.J. 95 (Cal.)
The Magistrate by an interlocutory order removed the joint receiver appointed by Civil Court\textsuperscript{175}.

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o. sensibilities of justice to be given priority over the semantics of law
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Sensibilities of justice are given priority over the semantics of law. The inherent power is provided to do complete and substantial of law. The power is to do complete and substantial justice, \textit{ex debito justiae}. Ordinary men are not concerned with the technicalities and nuances of legal terminologies like inherent power, interlocutory order, revision, review, recall, remand, appeal etc. The Power of the High Court is inherent in the court and it is open ended. The High Courts have been vigilant to keep the flame of inherent powers burning and are not to be eclipsed by provisions like sections 397 and 399.\textsuperscript{176} Similarly, even if the Code is silent about it, the High Court under inherent power could remand a case.\textsuperscript{177} The open ended character of the inherent powers enable the High Court to correct the misconceived proceedings. A minor partner is not personally liable for the transaction of the firm. He is a beneficiary to the profits of the firm. In \textit{P. Krishnamurthy v. Asst. Collector of Central Excise}\textsuperscript{178}.

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\item\textsuperscript{177} \textit{Praful Choudhary v. Sate}, 1979 Cri.L.J. 103. (Del.)
\item\textsuperscript{178} 1979 Cri.L.J. 297 (Mad.), the Madras High Court quashed the proceedings initiated under Section 9(d)(ii) of Central Excise Act and Rule 52A of Excise Rules.
\end{enumerate}
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The power under section 482 Cr.P.C. shows more affinity to the sociology of law than the technology of law. Institutions of justice should not be agencies of oppression. Especially in criminal justice system. The Criminal Rules of Practice require only a memo of appearance to be filed. If the Magistrate is to deny exemption to the accused, under section 317 Cr.P.C. on the ground that the Pleader has not filed Vakkalath it amounts to injustice. In K. Subba Rao v. State179, the Karnataka High Court remanded the case for fresh disposal by invoking inherent powers. The fact that the order of the Magistrate was an interlocutory one was not to obstruct the course of justice. An order described as interlocutory in nature is therefore interfered with under section 482 to prevent the abuse of the process of the court.180 It is not incumbent upon the High Court to meditate over the full import of section 397(2) Cr.P.C. The nature of the order and the mischief it creates are to be examined. Then to secure the ends of justice, as was held in Madhu Limaye v. State of Maharashtra181.

p. delayed prosecution - an abuse of the process of the court

Delayed and lame prosecution are sources of abuse of the process of the court. In Jagmohan v. The State182, the Delhi High Court held that prosecution launched under section 473 IPC. after the expiry of limitation, prescribed under section 468 Cr.P.C.

179. 1979 Cri.L.J. 369 (Kar.)
180. Mahadev Viswanath Parulekar v. Luis P. Lobo and another, 1980 Cri.L.J. 944 (Goa). The High Court remanded the matter for de novo consideration by the Magistrate
181. AIR 1978 S.C. 47 the High Court is to exercise the power; see also Dawaraka Dass v. State of Himachal Pradesh, 1980 Cri.L.J. 1048 (H.P)
182. 1980, Cri.L.J. 742 (Del.)
was an abuse of the process of the Court. It is all the more so when the delay is totally unjustifiable and unexplained. Interest of justice is of a lofty stature. The portals of criminal judiciary are not to be misused. The person who comes to the court must have a genuine cause. For instance if the complaint is not the aggrieved person\textsuperscript{183}, or a mandatory requirement of obtaining sanction for prosecution is absent\textsuperscript{184} or the proceedings lacks any probability of bringing any evidence\textsuperscript{185} the only refuge is under the inherent powers. Similarly, the inherent powers act as a disciplinary force. The trial Magistrates and Sessions Judges are liable to be carried away by impulses. This may prompt them to become too eloquent. Witnesses, officials and persons who are not in party array are commented upon. Not that the trial court is to be highlighted, but comments and observations made must be such as to become sufficient for part of the reasoning which proceeds the decision. Casual inadventure innocuous comments should be avoided. This is because the person subjected to the scrutiny does no get an opportunity to straighten the record. It is an affront to natural justice. This is an area where High Court interferes to correct the aberrations. The Allahabad High Court in \textit{Mathura Prasad v. The State}\textsuperscript{186}, expunged the remarks against a witness. It was observed that the judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and resume. Remarks of unjustified or unneces-

\begin{footnotesize}
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\item Parappa Sidram Karlati \textit{v. Dundwwa and others}, 1980 Cri L J (NOC) 85 (Kar.)
\item Laachi and another \textit{v. Inspector}, Insecticides Sree Gangangr and another, 1980 Cri L J. (NOC) 93 (Raj.)
\item Brahmadeo Nunia \textit{v. The State}, 1980 Cri L J. (NOC) 146 (Gau)
\item 1980 Cri L J. (NOC) 140 (All.)
\end{enumerate}
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sary, defamatory or dispersing nature destroy the solemnity and dignity of judgments\textsuperscript{187}.

General observations punctuated by strong and virulent criticism of particular persons will lead to exercise of inherent powers\textsuperscript{188}. A Session Judge shall not use the columns of his judgment to make disparaging remarks. This is all the more relevant when the aggrieved person is a public Prosecutor where relation with the Sessions Judge is already strained\textsuperscript{189}.

Order issuing summons is interlocutory in nature. If such an order is against the mandatory provision of the Code, it has no legs to stand on the anvil of inherent powers. In \textit{Ganesh Nand v. Swami Divyanand}\textsuperscript{190} the complainant was not the aggrieved party. Cognizance taken by the Magistrate for offences under sections 500 IPC was held to be violative of the Public policy contained in Sec. 199 (1) Cr.P.C. and hence quashed.

The High Court has the inherent powers to acquit a person convicted by the trial court if during the pendency of appeal the Original records of the case are irrecoverably lost. A Division Bench of the Allahabad High Court in \textit{Sita Ram and others v. State}\textsuperscript{191} allowed the appeal on this ground in a case alleging offences under section 302 read with section 149 IPC. During the

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\textsuperscript{187} Padma Charan Biswal and another v. Balara Biswal and others, 1980 Cri.L.J. (NOC) 1497(Ori) held that High Court by invoking the inherent powers could expunge such remarks and observation unless it affects or alter the substance or merits of decision.

\textsuperscript{188} Govindaraj Shetty v. State of Karnataka, 1980 Cri.L.J. 879 (Kar)

\textsuperscript{189} K.P. Radhakrishana Menon v. State of Kerala, 1980 Cri.L.J. 1073 (Ker)

\textsuperscript{190} 1980 Cri.L.J. 1036

\textsuperscript{191} 1981 Cri.L.J. 65 (All.)
\end{flushright}
pendency of the appeal the Original records were destroyed due to fire. It was not possible to reconstitute or reconstruct the file, nor was it legally permissible for the appellate court to affirm the conviction. This is one view of administering criminal justice. Given the same set of facts applying the inherent powers another Judge may reach a different conclusion. In *Sadhu v. State*\(^{192}\), Allahabad High Court set aside the order of the Sessions Judge and ordered for retrial to secure ends of justice. The conviction was for offences under Sec. 307 and Section 34 of I.P.C. The reasoning of the judge was that without going through the record the appellants could not be acquitted nor could the appeal be dismissed in view of section 396 of the Cr.P.C.

Interest of justice is the paradigm on which the High Court would test every situation for the application of inherent powers. If the accused has a right to have a counsel at the time of investigation then it can be enforced by exercising inherent powers. In *Ram Lalwani v. The State*\(^{193}\) the Delhi High Court allowed the appeal against the order of the Magistrate. The petitioner was accused in the case for throwing knife at the Prima Minister. When stolen articles are sought to be returned and the Magistrate declined the prayer that the High Court can interfere through inherent powers. In *J.P. Saraogi v. Jamal Ahmad and another*\(^{194}\), the ECG Machine was directed to be released. The High Court considered the fact that an ECG machine is of great use to the petitioner who is a doctor. The patients may also suffer.

\(^{192}\) 1981 Cri.L.J. 67 (All)
\(^{193}\) 1981 Cri.L.J 97 (Delhi)
\(^{194}\) 1981 Cri.L.J. 543 (Patna)
Long delay of 11 years from the alleged date of occurrence of the act would defeat the enquiry and justice. The Punjab and Haryana Court in *Prithvi Raj and another v. State of Haryana*\(^{195}\), held that it was gross abuse of the process of the court, where FIR registered in 1979 and a charge framed in 1980.

If a question of jurisdiction is raised trial shall be commenced only after deciding it. In *Abhay Lalan v. Yogendra Madhav Lal*\(^{196}\) the Kerala High Court held that the decision regarding jurisdiction is to be on the basis, of the allegations and averments in the complaint or the charge. Evidence that is yet to be adduced cannot confer jurisdiction. Otherwise section 177 Cr.P.C. would become otiose. If the Magistrate proceeds without jurisdiction it will be an abuse of the process of the court. Proceedings of the trial court in violation of any of the provisions of the Code is depriving such course of jurisdiction. The Kerala High Court in *Pavithran Madhukkani and others v. Kunjukochu & another:*\(^{197}\) held that order passed by the Magistrate without complying the procedure contained in section 137(1) of the Code was unsustainable.

Similarly for non-compliance with the amended provisions of Prevention of Food Adulteration Act, the proceedings were quashed by a Division Bench of Calcutta High Court in *United Flour Mills Co.Ltd. and others v. The Corporation of Calcutta*\(^{198}\).

The above discussions with the help of decisions of the Supreme Court and various High Courts leaves one at the point

195. 1981 Cri.L.J. 984 (P&H)
196. 1981 Cri.L.J. 1667 (Ker)
197. 1982 Cri.L.J. 103 (Ker)
198. 1982 Cri.L.J. 578 (Cal)
where the survey was commenced. The dimensions of inherent powers are so complex that judicial mind has not scaled even the possible extent and reached the possible distance in the realm of criminal jurisprudence. The topics of agitation in the court under inherent powers offer a panoramic vision of the social action and interaction it leads one to conclude that to achieve discipline and decorum in administration of criminal justice; inherent powers have come to stay with lasting eminence.

q. delay in lodging FIR - sufficient ground to quash the proceedings

*Umman Koshy v. State of Kerala*\(^\text{199}\), it was held that inordinate delay in filing FIR can be a ground for quashing the proceedings at the preliminary stage. The position obtained is that, there is no hard and fast rule holding that an FIR shall not be quashed. But, at the same time, in *K. Karunakaran v. State of Kerala*\(^\text{200}\), it was held that the investigating agencies must have sufficient opportunity to gather materials. This freedom is ensured in Section 300 of the Procedure Code. This cannot be diminished even by application of legal principle like 'res judicata'. It was also held that the judgment in a writ petition cannot be taken as binding juridical pronouncement to quash an FIR lodged for a second time after gathering additional information. This decision of the Kerala High Court reflects the quintessence of the jural principles surrounding the application of inherent powers with respect to a case which is still at the investigation stage. The court had referred to and relied on and utilised the reasoning

\(^{199}\) 1989 (2) KLT 384

\(^{200}\) 1997 (2) KLT 128
of Supreme Court effecting a progression of the principle con­tained in a series of decisions\textsuperscript{201}. A curious aspect in this case is that the petitioner before the High Court tried to derive advan­tage from an earlier decision in his favour of the High Court where in, prosecution proceedings were quashed at the initial stage it­self. In \textit{K. Karunakaran v. Nawab Rajendran}\textsuperscript{202}, the court applied inherent powers positively to quash the proceedings.

\textbf{r. application of inherent powers is to be guided by the society's interest}

It was held that a court cannot be utilised for an oblique purpose; where the chances of an ultimate conviction are bleak, the court may quash the proceedings even at the preliminary stage. The factor which deserve attention is that, in both the above decision, the Supreme Court's ruling in \textit{State of Haryana v. Bhajanlal & others}\textsuperscript{203} came to the aid of the High Court. This shows that High Court can approach and apply inherent powers on an objective and dispassionate manner. When interest of jus­tice is pitted against interest of persons, the court gives prefer­ence to interest of justice. The very concept of administration of criminal justice is social interest. Therefore, application of inher­ent powers is also to be guided by Society's interest. In \textit{Chair­man, Hindustan Latex Ltd. v. State of Kerala}\textsuperscript{204}, a private com­plaint filed against the petitioner, for publishing an alleged obscene advertisement was impugned. But, two responsible bod­ies had already decided not proceed against the accused, ac-

\begin{itemize}
\item \textsuperscript{201} Ref. \textit{supra} n. 73.
\item \textsuperscript{202} 1997 (2) KLT 15
\item \textsuperscript{203} AIR 1992 SC 604
\item \textsuperscript{204} 1999 (1) KLT 418
\end{itemize}
cepting his explanation. The court quashed the private complaint, for the larger interest of the Society for which the advertisement was published in the consideration.

Similarly, in *Janet v. State of Kerala*\(^{205}\) interest of justice was given precedence over other factors. In the proceedings of a Murder case, PW-1 (Prosecution Witness) who is the widow of the deceased moved the trial court for issue of summons to the witnesses. The petition was dismissed. In the application filed under section 482 of the Criminal Procedure Code, it was held that whenever an illegality is brought to the notice of the court, the court has to act to correct the illegality so as to secure the ends of justice. The aspects like *locustandi* of the petitioner are to be decided with regard to the status of the petitioner and the nature of the proceedings.

s. the court to interfere when the abuse of the process of the court is palpably strong

Even though the generally accepted view is that a trial proceedings shall not be disturbed at the threshold, when abuse of the process of the court is palpably strong, the court can interfere. In *Mathew v. Nalini*,\(^{206}\) the High Court quashed the complaint against the Chief Editor of a news paper alleging offence under section 499 IPC. The court held that as per the provisions of the Press and Registration of Books Act, 1867 and Editor means a person who selects material for publication. The same averment in respect of the Editor need not apply to the Chief Editor. Here, the decision of the High Court was challenged be-

\(^{205}\) 1993 (2) KLT 134.

\(^{206}\) 1987 (2) KLT 286
before the Supreme Court. The Supreme Court was of the opinion that the High Court committed an error in quashing the proceeding on a point not raised by the party. In Nalini v. K.M. Mathew\textsuperscript{207} the Supreme Court was of the opinion that High Court ought to have been given notice to the parties and heard them on the question before reaching a conclusion. The case was remanded to the High Court for fresh disposal. But, the High Court on fresh consideration also found no ground in proceedings with the prosecution and therefore again quashed the proceedings\textsuperscript{208}. It shows the independence of the High Court to form an opinion so far as inherent powers are concerned. If an action initiated against a person will not lead to any concrete result and apart from harassing the accused with trial, nothing is achieved, then inherent power is to be exercised\textsuperscript{209}.

The above discussion of the decisions of the various High Courts and the Supreme Court show the amplitude of the inherent powers. If a definition of inherent power is tiresome the chief reason is this continuous shifts in the impact it has in the administration of justice. We get a view of this dynamism of the power of the High Courts first through the reasonings of the Supreme Court and then through the decisions of the High Courts.

\begin{itemize}
  \item \textsuperscript{207} 1988 (2) KLT, S.N. 21 at 13
  \item \textsuperscript{208} K.M. Mathew v. Nalini, 1988 (2) KLT 832
  \item \textsuperscript{209} N. Jothi v. Rajamani, 1996 Cri.L.J. 2435 (Mad.)
\end{itemize}