INHERENT POWERS OF THE HIGH COURT UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973

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PREFACE

The great principle underlying the inherent powers of the High Court under section 482 Cr.P.C. is subjected to a lot of uses and abuses. The result is controversies in the administration of justice. So this requires conceptual clarity, sharpening, structuring or channelising. There are many issues and problems in this area. Its historical, theoretical and juristic bases constitute this thesis. A person accused of an offence is to defend himself against the allegations of the prosecution or the complainant. Sometimes proceedings are initiated on malicious and vexatious grounds. Therefore, the power is to be preserved with the court of justice to avoid vexatious and motivated proceedings. Hence, inherent powers of the court are recognised in the criminal jurisprudence. The power is not vested in the court through statutes. On the otherhand, the inherent powers are preserved and saved, over and above the provisions of the Code of Criminal Procedure. Taking historical, territorial and juristic factors into consideration High Court is the right choice to become the repository of inherent powers under section 482 of the Code of Criminal Procedure. That signifies the importance of the study of inherent powers of the High Court.

This thesis consists of an introduction and ten chapters arranged in five parts. Part I consists of the introduction. It is a statement of the theme of the thesis. An inkling of the nature of the concept of inherent powers is also given in the introduction. Part II consists of chapters I and II. Chapter I deals with the genesis of the concept of inherent powers of the courts in India. The
historical background against which the concept of inherent powers developed is analysed. The other principles and doctrines in the common law realm having bearing on inherent powers are also consulted. They include the concept of Rule of Law, the doctrine of judicial review, the doctrine of judicial precedents and development of inherent power concept through cases. The operational dynamics of inherent powers against the background of juristic and juridical concepts, are explained in Chapter II. The legal Philosophy or Jurisprudence that can be deducted from the concept of inherent powers is discussed, drawing lessons from teachings of distinguished jurists like Julius Stone, B.N. Cardozo, C.K. Allen, Lord Denning, Lord Hailsham, etc.

Part III deals with the constitutional impact and provisions in the Code of Criminal Procedure. Chapter III, IV and V are included in this part. Chapter III deals with the constitutional dimensions of inherent powers. Supreme Court has itself got inherent powers under the Constitution of India. This has influenced the exposition of inherent powers of High Courts under section 482. The elements of inherent powers enumerated in the Criminal Procedure Code, 1973 form the subject of Chapter IV. An annotation of the statutory provision contained in section 482, Cr.P.C. in the light of decided cases of the High Courts and Supreme Court is made in this chapter. In Chapter V, a jurisdictional conundrum created by the application of inherent power is discussed. The jurisdictional conundrum is explained against the provisions of revision, review, recall etc.

Part IV of the thesis contained chapter VI, VII and VIII having an overview of inherent powers. Chapter VI deals with certain
obvious disadvantages in invoking inherent powers. This includes problems in respect of rules of evidence and principles of law. The facility of the High Court to appreciate evidence while invoking inherent powers is minimum.

Chapter VII deals with the extent and reach of inherent powers in criminal justice system. Resort to inherent powers of the High Court and the Supreme Court, is getting more and more popular resulting in the province and function of the inherent powers expanding over the years. The Chapter deals with the modus-operandi of the High Courts through a survey of cases. There are similarities as well as dissimilarities in the approaches of the Supreme Court and the High Courts to the application of inherent powers. Chapter VIII makes a comparative study of the inherent powers of the Supreme Court and High Courts. Emphasis is given to inherent powers in the context of administration of criminal justice and exposition of the fundamental rights by the Supreme Court.

Part V consists of concluding chapters. In this part chapters IX and X are included. In chapter IX of the thesis, a summing up of various aspects of inherent powers is attempted. A constructive assessment of the application of inherent powers is attempted by trying to evaluate the nature of the inherent powers exercised by the High Court based on the major findings of the research work. The findings and suggestions are enumerated in chapter X which is the concluding chapter.

I recollect with great gratitude and reverence the highly valuable and constructive help received from several of my benefactors. Foremost among them are Dr. G. Sadasivan Nair, Profes-
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