CHAPTER - IV

ELEMENTS OF THE INHERENT
POWERS OF
THE HIGH COURT

The Code of Criminal Procedure is the premier adjective law for the administration of criminal justice. Its importance is social, legal, political and historical. Social security and social peace are the *sine qua non* for a civilised society. Law is the most efficacious medium for social engineering. Political organizations and institutions are meant to protect social harmony. Law is the chiefest weapon in the hands of the political leadership to supervise all social activities. Whatever be the provisions in the substantive law a clear and conscientious procedure is required to secure the ends of justice. The provisions for inherent powers of the High Court contained in Section 482 of the Code of Criminal Procedure articulate the means to realise justice.

i. **Objective of Inherent Powers**

The cardinal objective of inherent powers is to safeguard the virtues of justice. This is evident from the fact that the occasion for invoking the inherent powers of the High Court is before the commencement of trial. Comparative studies of criminal trials in different legal systems have been unanimous in the opinion about the sanctity of fair procedure. It borders on the theme of human rights. In India it is stressed in the context of the provisions contained Part III and Part IV of the Constitution. The publication of
the proceedings of a colloquium under the British Institute of Studies in International Comparative law entitled as, *The Accused-A Comparative Study* brings out the all the important character of procedure\(^1\). In the pretrial stage the question of police powers becomes irrelevant. Therefore the question of human rights comes; and it would lead our attention to the sociological dimensions of criminal law\(^2\).

Crimes predate human society. Even in pre-historic period, neohistoric period or the puranic or mythological period, crimes existed. Most treacherous offences of today were prevalent in the ancient societies also. Man's innate propensity to dominate his fellow beings, his endeavour to amass property and acquire position, his intolerance of alien faith all resulted in behaviour injurious to others and detrimental to the society. State as the guardian of the society stands sentry to protect the social interest, mores and values. Even when individual freedom is recognised as fundamental, inalienable and inextricable, care is taken to limit such freedom on the basis of the public good.

Article 19 of the Constitution of India recognises individual freedom of persons. These freedoms are subject to reasonable restrictions. The State while recognising the worth of man also protects the unity of the society\(^3\). Rights and freedom do not mean licence and impertinence. For every jural correlative there is jural opposite. If there is right, there is duty, if there is power there

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2. *Id.* at p.5, from the introduction by J.A. Coutts entitled, "The Public Interest and The Interest of accused in Criminal Process".

is liability, if there is immunity, there is disability. So man, though born free, is in chains everywhere. This idea of Rousseau is symbolically adopted to show that the chain of law bridles the proclivity of man. In this context criminal justice system is most significant.

The type of the laws prevalent in a society must be according to the requirement of its people. *Ubi Societatis Ibi jus* is the principle. The harshness of a legal system is often measured by the character of its penal laws. Substantive criminal law would be broadly the same in all legal systems. The basic difference is in the procedure. A body of procedural laws for the administration of criminal justice based on rational principles is required to inspire confidence in the public. Securing the ends of justice should be the ultimate objective of the laws. The Code of Criminal Procedure, 1973, contains provision for adjudicating criminal cases. The Code with its companion, the Evidence Act, 1872 keeps patrol of criminal justice system and ensures that every offence is dealt with according to procedure established by law. Criminal Procedure Code provides for every reasonable situation contemplated in advance. Still there can be circumstances unimagined by the authors of the code. This shall not impede the smooth administration of justice. In these days of Human Rights Jurisprudence, the most vulnerable area of social psyche is the mismanagement of criminal justice system.


5. The maxim meaning, as is the Society, so is the law.

6. For historical background of events leading to the enactment of the Code of Criminal Procedure, 1973, See Ch.I *supra*.
This is the region where the prerogative of the State rubs with the privileges of the citizens. By merely imputing a person in a criminal case and putting him to defend, a serious drain of money, material, mental peace and status can be affected. Courts are visited by fortune-seekers and time servers. Situations arise where the very proceedings run counter to the morality and ethics since the allegations are vague, vexatious and illegal. At this age of mutual human mistrust and apathy, where:

"Best lacks all conviction, and the worst is full of passionate intensity,"\(^7\)

human beings are exposed to the vagaries of the State. The only solace is the judiciary which one expects to do complete and total justice. In this respect requirement of a foolproof procedure is stressed Hon'ble Justice Scarman's words are apt to be recalled:-

"More and more it is becoming clear that the old adage *ubi remedium ibi jus*, has as much relevance to our problem as its successor *ubi jus ibi remedium*. In the civilized world the substantive criminal law does not greatly differ from one legal system to another: Nor-with a few exemptions (example political offences, capital punishment, the treatment of the young offender.) do the difference really matter. If a man is proved a thief, he is, almost the world over, convicted of crime. But how does society set about proving its case and punishing the guilty? Here is the rub: for justice and liberty depend so much on the definition of

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the crime as on the nature of the process, administrative as well as judicial designs to bring the alleged offender to the justice.

For this courts must have legislative mandate to act effectively and convincingly. It is in this context that one has to view the inherent powers of the High Courts under section 482 of the Code of Criminal Procedure. It is a privilege against incrimination available to the accused in India. Inherent powers of the High Court are saved in section 482 of the Code. It is distinguished from the general scheme of the Code through a *Non-obstante* clause. "Nothing in this Code shall be deemed to limit or affect the inherent powers of High Court". Inherent Powers are unlimited and unaffected by the provisions of the Code. No provision can be deemed to override the inherent powers. The inherent powers are specifically for three purposes:-

i) Powers to make such orders as may be necessary to give effect to any order under the Code.

ii) Power to prevent abuse of the process of any court.

iii) Power otherwise to secure the ends of justice.

If one searches for generalisations in applying inherent powers there is difficulty. It is essentially something which is to occur to the deciding judge.

The principles enshrined in S. 482 Cr.P.C., enumerated above are general, universal and eternal ingredients for justice of high


9. It is the gist of inherent powers as saved in Sec. 482 Cr.P.C. 1973 and Sec. 561-A Cr.P.C. 1898.
quality. Actually there is only one major dogma, *ie* Justice. Three ways are suggested to reach justice. Think justice, act justice and reach justice. The reason for suggesting that there is one major dogma Justice is because justice is the objective of inherent powers. In S. 482 Cr.P.C. it is not an enumeration of the ingredients of inherent powers. It is an elaboration of the concept of inherent powers.

ii. **Principle of Inherent Powers**

   a. inherent powers are such powers required to give effect to orders passed under the Code.

   This means the proceedings initiated under the Code are to be respected and effected. Orders passed under the Code form the various processes of the criminal courts. The process must be obeyed. Abuse of the process of any court amounts to order passed under the code being not given effect to. This in turn leads to a situation where the ends of justice are rendered insecure. Inherent powers are preserved to protect justice. So these notations of inherent powers demonstrate the progression of justice. While giving effect to orders passed under the Code abuse of the process of all courts is prevented. If orders passed under the Code are abused, or if provisions of the Code are abused and illegal orders are passed the sufferer is justice. Our sense of justice is wounded. Even when the court puts the provision of the Code for wrong purposes it may be without malafides and technically be said that justice is administered. But, there, Lord Hewart's immortal words come to the fore; justice should not only be done, but it should be manifestly and undoubtedly be seem to
be done. That cannot be when the orders passed under the Code abuse the process of the court or process of the court are abused to render nugatory orders passed under the Code. In both cases justice suffers. The ends of justice are let vulnerable. So there is only one chief function to the inherent powers. That is to patronise, protect and practice justice. It is the power to give effect to orders passed under the Code, or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. For this the inherent powers in the Code are limited by or affected by nothing in the Criminal Procedure Code. It puts justice above law. If specific provisions are absent in the Code, still justice is to be done, invoking inherent powers. That power is there even if one assumes all provisions of the Code are declared redundant. It is not assumption, it could be the reality in yester years where neither Code nor legislatures existed. Then justice was administered with inherent powers of the court. Justice cannot operate in vaccum; there must be laws empowering the courts. Even if there is no law the courts must still have powers to hold justice aloft; and that power is inherent powers.

Inherent powers of the court are not conferred on the court through laws. they are not vested. They are not formulated or devised or invested. They were there; they were there even before we used the catch phrase 'inherent powers' to signify the capacity of the court to do ex debito justiciae. Inherent power is preserved and saved. Section 482 Cr.P.C. only makes a declaration regarding the inherent powers of the High Court. So, when one finds inherent powers of the High Court, it is only meant, as suggested, declared or indicated through section 482 Cr.P.C. We
derstand inherent powers under section 482 Cr.P.C. in the same vein as we understand the revisional powers under sections 397 to 401 Cr.P.C. or appeal powers or various other procedures contemplated under various provisions of the Code. Section 482 Cr.P.C. announces that there is more to the requirement of justice than what is stated in the Code. That deficit is met by inherent powers. Therefore, to understand the full import of inherent powers one should not be satisfied by knowing the criminal procedure in the Code. One should come out into the full blaze of jurisprudence to see how ends of justice are secured by the inherent powers of the High Court. The mechanics of inherent powers helps one to set a kaleidoscopic view of the realm of criminal justice administration.

b. power to prevent abuse of any court

Abuse of the process of the court is a phrase which sums up the entire gamut of practice and procedure of the judicial process. Conduct of the presiding officer is crucial. Contents of the complaint are vital. Character of the parties involved in the proceedings is relevant. Propriety of the forum chosen, applicability of the provision of law invoked are all having a bearing on the process of the court. One cannot narrow down the scope of the process of the court to the summons, notices, warrants and other proceedings issued by a court. Process of the court is the power of the court, the prestige of the court. A court of law shall not be a theatre of the absurd. Sources of abuse can be the Magistrate, the parties, the counsel, the prosecutor, the witness or the investigating agencies. A client may speak profane language in the court. Statements may be made for private motives. If the pre-
siding officer is to be peeved by it and ventilates his ire on the
counsel it is abuse of the process of the Court\textsuperscript{10}. Judicial pro­
nouncements must be judicial in nature and should not normally
depart from sobriety, moderation and reserve

iii. **No Hard and Fast Rules**

In coming to the conclusion that there is abuse of the pro­
cess of the court, the High Court cannot have any hard and fast
rules. There is no eternal principle to detect and destroy the abuse.
The High Court itself should be vigilant and not overzealous.
Exercise of inherent powers render real and substantial justice.
While invoking inherent powers the High Court does not examine
the veracity of allegations\textsuperscript{11}. Under the guise of invoking inherent
powers the High Court cannot interfere with the judicial exercise
of the discretion vested in the lower courts. Nor should the High
Court be diffident in acting where stern action is required. Com­
plaints constituted by vague allegations, after thoughts, figments
of imagination cannot supply the real material connecting the ac­
cused and the offence alleged. The Supreme Court of India in
*Bhaskar Chattoraj v. State of West Bengal*\textsuperscript{12} quashed the charges
under sections 478 and 380 IPC in an appeal under Article 136
of the Constitution. The High Court had declined to exercise the
inherent powers. The Supreme Court made its unique imprint when
it quashed the proceedings against the appellant and allowed the
proceedings against the other accused to continue. If the com­

\textsuperscript{10} Assankutty v. *State*, 1990 (1) KLT 207. For getting the benefit under S. 19 (2)
of the Prevension of Food Adulteration Act accused made statement.

\textsuperscript{11} *Kelappan v. Kalyani*, ILR1991 (3) 866

\textsuperscript{12} 1991 Supp (2) SCC 574
plaint is prima-facie not genuine or bonafide no more vacillation is expected of the High Court. An inquiry under section 363 (1) of the Merchant Shipping Act 1958\textsuperscript{13} was averted by the Supreme Court as the complaint did not satisfy the essential requisites of section 363 of the Act. The Supreme Court's impact on the inherent powers of the High Court is remarkable. It cannot be said that the Supreme Court is examining the correctness or otherwise of all decisions of the High Court. The Supreme Court's opportunity is mainly through the jurisdiction under Article 136 of the Constitution. Prevention of the abuse of the process of the court is the one reason on which the High Court bases its jurisdiction for pressing inherent powers into action. When the High Court invokes inherent powers on being convinced that the offence alleged is not made out even if taken at their face value, the Supreme Court would be very slow to interfere with the finding of the High Court\textsuperscript{14}. This does not mean that the High Court can pre-judge the case. In \textit{State of Bihar v. Raj Narain Singh}\textsuperscript{15} the order of the High Court quashing the prosecution at the preliminary stage was set aside and the criminal case restored for trial by the lower court.

The situation created by a plethora of decisions by the various High Courts is complex and enigmatic. The question time and again posed is about the depth and reach of the inherent powers of the High Court. Inherent powers of courts when in-

\textsuperscript{13} Capt. Subash Kumar v. Principal Officer, Mercantile Marine Department, (1991) 2 SCC 449.
\textsuperscript{14} Dhanwanti Vaswani (Dr) v. State and another, 1991 Supp (2) SCC 329.
\textsuperscript{15} 1991 Supp (2) 393. The Supreme Court followed the decision in \textit{Eastern Spinning Mills and others v. Rajiv Poddar and others}, 1989 Supp (2) SCC 385.
voked in a fit case are effective. But, when the invocation of the inherent powers is clouded by doubt and apprehension one yearns for a scheme or guidelines for the High Court to use the jurisdiction. When the inherent powers of the High Court are pressed into service for quashing an FIR, or a complaint the effect is that the case altogether diffuses into thin air. In *State of Haryana and others v. Bhajanlal and others*,

16 disgusted with the action of the High Court, the Supreme Court came out with a few illustrations containing circumstances with a few instances which would examine the power being used in a regular and legal manner. The Supreme Court took a leaf or two out of the voluminous concept of judicial review and dilated the powers of the High Court, be it under Article 226 of the Constitution or section 482 of the Code of Criminal Procedure. In both, what is expected of the High Court is an approach marked by maturity, detachment and dispassionateness. The High Court is not to evaluate evidence. The High Court is not to assume or presume, infer or imply. While wielding the powers to prevent the abuse of the process of any court, the High Court itself is not to degenerate into a forum for abusing the process of the court. It is in this context that one has to examine the categories of reference made by the Supreme Court in *State of Haryana v. Bhajanlal*.

iv. **Depending on facts and Circumstances**

The consensus of judicial pre-meditation is that the facts and circumstances of each case would give impressions to decide whether there is abuse of the process of the court. In *R v. B*

17. *Ibid*.
Criminal Division of the Court of Appeal considered the conviction of 'B' for rape and indecent assault of daughter and step-daughter. The event had occurred in 1970. The first case was registered in 1989. The action was challenged. The trial judge refused to grant a stay of proceedings on the ground of abuse of the process. The question before the Court of Appeal was whether a fair trial could be possible? According to the Court the verdict would be unsafe and conviction questionable. The court observed that the trial judge had referred to the difficulties of the complainant without referring to the difficulties of the accused. But in R v. Hickson the Court of Appeal dismissed an appeal. The action was for indecent assault and sexual abuse of girls between 13 and 14 years committed between 1983 to 1988. The conduct was for a substantial period of time and the court had strong supporting evidence. Sometimes, the allegations may be solid. But, the nature of controversy in those cases is such that the proper forum would be a trial court. In some cases, for example, failure to exercise inherent jurisdiction would be endorsing the abuse of the process of the Court. In one case, a proceedings for an offence of breach of trust under section 406, Indian Penal Code was initiated against a person for shortage of paddy and rice produced for Food Corporation of India. The matter was under arbitration. The Magistrate taking cognizance under such circumstances would be an abuse of the process of the court.

In a petition under section 482 Cr.P.C. the High Court refused to quash the proceedings. According to the Supreme Court,

it was a fit case for invoking the inherent powers as the forum of the criminal court was sought to canvas an issue, the core of which was purely a civil matter. The refrain running through the pronouncements of the Supreme Court is always that the power under section 482 of the Criminal Procedure Code is not to be invoked by the High Court on irrelevant considerations, or for thwarting the prosecution or to cut short a normal process of criminal trial.

The weight of the Supreme Court's opinion is that while the High Court is all powerful to press the inherent powers into action in fit cases, the power shall not be a ruse to indulge in judicial experimentation or speculation. In *State of Maharashtra v. Budhikota Subbarao, (Dr)* the Supreme Court held as unwarranted the strictures passed by the High Court against the State and the Public Prosecutor of sharp practice, suppression of facts, fraud etc.

The abuse of the process of the court itself is patent and is understood on a close acquaintance with the facts of the case as disclosed by the complaint. A complaint which alleges a father having committed the offence of kidnapping his daughter, provides an expressly paradoxical situation. Father is the natural guardian. Even if, the girl is staying with her maternal uncle proceedings against the father for kidnapping would not stand, if the

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24. (1993) 3 SCC 71. For detailed analysis of adverse commits and its effects see *infra* Ch. VII. Also see Chapter IX
girl is taken away by the father. Entertainment of such a complaint by the Magistrate is an abuse of the process of the court. The High Court is justified in quashing the order of the Magistrate. Abuse of the process once detected should be eradicated. But, the dividing line between use and abuse is thin and very finite; and there is no commonly recognized line of control between the two. So, when using the inherent powers the High Court should be alert to the fact that only the abusive part of the process of the court is to be quashed and if anything worth survives, even after this, in the proceedings, it should be allowed to stand. Otherwise, the ends of justice would suffer. A wife brings in an action against her husband under Section 494 and 498-A of I.P.C. Cognizance is taken by the Magistrate. On an application under section 482 of the Code of Criminal Procedure, the High Court quashed the entire proceedings. The main reasoning of the High Court was that the proceedings for offence under section 494 of the Indian Penal Code would be hit by limitation under section 468 Cr.P.C. and hence the action was barred. The Supreme Court's remonstrance of the High Court is not only for quashing the entire proceedings but also that the prohibition under section 468 of Cr.P.C. is not applicable to offences under Section 494 I.P.C. The conclusion to be drawn is that the High Court as a superior institution for maintaining judicial discipline in the administration of criminal justice must use the power, under section 482 of the


Sec. 494: Marrying again during life time husband or wife.
Sec. 498 A: Husband or relative of husband of a woman subjecting her to cruelty.
Sec. 468 Cr.P.C.: Bar to taking cognizance after lapse of the period of limitation.
Code of Criminal Procedure, only for salutary purposes. The High Courts are not to act as Magistrate Courts or other subordinate criminal courts; instead the power helps the High Court to keep the Magistrate Court and other courts in good stead to administer justice without blemish or pollution. The most crucial aspect which requires the engagement of the judicial attention is that the forum of the criminal judiciary is not used for executing a hidden agenda of the parties. In *Madhavarao Jivajirao Scindia and others v. Sambhajirao Chandrojirao Angre and others,* basis of the controversy was civil rights, human relationship, relevance of documents, rights created under tenancy and trust etc. The story had all the trappings of a civil case. But, the complainant came to the Magistrate court with a basket full of allegations of offences under sections 406, 467 read with section 34, and 120 B of IPC and Section 53, Trust Act 1882. If a criminal court is to entertain such complaints for any length of time, it is sheer abuse of the process of the court. The party should be sent back at the threshold itself. If the Magistrate does not do this, the High Court under section 482 Cr.P.C. can prevent the abuse of the process of the court by quashing the proceedings at the preliminary stage itself. While quashing the proceedings pending before the trial court with the inherent powers the High Court should have strong and effective compulsion. It cannot grant stay of proceedings pending before the trial court ordinarily, or search for evidence, pondering over probabilities.

27. 1988 SCC (Cri) 234. Interfere at threshold or at interlocutory stage is a rare exception. The settled principle being no interference at interlocutory stage, *P. Vijayapal Reddy and others v. The State,* 1978 SCC (Cri) 501
28. *M.C. Mehta (II) v. Union of India,* 1988 SCC (Cri.) 141
v. Prima facie Disclosure of an offence

One line of thinking to detect the abuse of the process of the court is to check whether the complaint *prima-facie* discloses the commission of an offence. If the complaint is only a litany of the grievances of the complaint against the accused without any logical coherence or rational nexus the duty of the High Court is to quell the proceedings by quashing the same. Similarly, if the complaint is vague, imaginary and only the dispersed meditations of a disgruntled litigant the criminal judiciary shall not be allowed to accommodate such persons and such proceedings. What is required by the High Court is to fine tune its jurisdictional sense to tackle the sensibility of the proceedings. Two decisions of the Supreme Court of India provide a contrasting study - *Municipal Corporation of Delhi v. Purushottam Das Jhunjunwala & others,*30 and *Municipal Corporation of Delhi v. Ramkishan Rohtagi and others.*31 In both the cases, the offences alleged were under the provisions of the Prevention of Food Adulteration Act, 1954. In *Jhunjunwala*32 the complainant clearly stated that the Chairman, Managing Director and Director of the Mill were in charge of the company and responsible for the conduct of the business, at the time of the commission of the offence. The High Court by invoking the inherent powers quashed the proceedings taken by the Municipal Corporation Delhi. This according to Supreme Court, is in spite of the specific allegation in the

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30. 1983 SCC (Cri) 123.
31. 1983 SCC (Cri) 115.
32. Ref. *supra* n. 30.
complaint. Clear averments were made regarding the active role played by the accused and the extent of their liability. Therefore, it could not be said that their averments were vague.

"From a perusal of the various clauses of the complaint, including para 5, it is quite clear that a prima-facie case for summoning the accused has been made out and the High Court was absolutely wrong in holding that the allegations made in para 5 are vague. The High Court failed to consider that the allegations were quite clear and explicit so as to be sufficient for taking cognizance of the offence against the accused".

According to the Supreme Court this case does not merit the engagement of the powers under section 482 of Cr.P.C. High Court has misdirected itself in wrongly exercising the discretion. The accused were held to be summoned and placed for trial in accordance with law. In contrast, in Ram Kishan Rohtagi, the

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33. Supreme Court extracts paragraph 5 of the complaint in paragraph 3 of the judgment in 1983 SCC (Cri) 123 at p. 124, para 3 reads,

The High Court was of the view that the complaint did not disclose any offence and adopting a similar line of reasoning as in criminal Appeal No. 701 of 1980, quashed the proceedings, against respondents No. 1 to 11. We have already dealt with the law on the subject in our decision in Criminal Appeal No. 701/1980, a copy of which is placed on the file of this case. The relevant allegations against the accused respondents are to be found in para 5 of the complaint which may be extracted thus:-

"5. That accused Ram Kishan Bajaj is the Chairman, accused R.P. Neyatia is the Managing Director and accused 7 to 12 are the Directors of the Hindustan Sugar Mills Ltd., and were in charge of and responsible to it for the conduct of its business at the time of commission of offences."

34. Ibid.
35. Ibid
36. Ref. supra n. 31.
complaint in fact did not make out any offence. Under such circumstances, the proceedings effected could be quashed at the initial stage itself. The complaint was against the accused Manager and Directors of the Manufacturing company. It was on the presumption that the accused were in charge of and responsible for the conduct of the business of the company at the time of sampling. The High Court quashed the proceedings. But, the Supreme Court held that prima-facie case was made out against the manager in view of the very nature of his office and functions. But, the complaint was vague as regards the Directors as no offence was revealed against them. The Supreme Court ratified the view of the High Court partially, holding that the High Court was justified in quashing the proceedings against Directors but erred in doing so against the Manager. According to the Supreme Court, the judicial and juridical perception required here is that the power under sections 482 and 397(1) of Cr.P.C. that had same effect when applied, differ in their character and conduct. Revisional power is not to prevent the abuse of the process of the court. As explained by the Supreme Court in Madhu Limaye v. State of Maharashtra,37 section 482 of Cr.P.C. has a different parameter and it is a provision independent of section 397(2) Cr.P.C. Inherent powers are of a greater amplitude, and handy to prevent the abuse of the process of the court. Where the process of the Court has been seriously abused the High Court is to invoke the inherent and separate powers to pass orders. The maxim ex debito justitiae is to be invoked which means in the interest of justice. That the inherent powers are exercised by the

37. 1978 SCC (Cri) 10.
High Court lest the portals of criminal courts would be frequented by persons with frivolous and vexatious worries. In *Chandrapal Singh v. Maharaj Singh and another*, the complainant embarked on a course of criminal proceedings after losing his case in the Civil Court under Rent Control proceedings. The tenant was implicated in frivolous criminal prosecution. According to the Supreme Court, such gross abuse of the process of law must be prevented by the High Court in exercise of the inherent jurisdiction.

Abuse of the process of the court is contemplated in the functioning of subordinate criminal courts. While preventing the abuse of the process of court, the High Court itself cannot perpetuate abuse by invoking inherent powers in the wrong way and in the wrong case. In *Kurukshethra University v. State of Haryana*, the Supreme Court held that section 482 of the Code of Criminal Procedure does not recognize any arbitrary powers for the High Court. In otherwords, the decision of the High Court while applying inherent powers should not be whimsical or capricious. The general understanding is that inherent powers are applied sparingly and with maximum reserve and reticence. Only the rarest of rare cases deserve invocation of powers under section 482 Cr.P.C. In the case mentioned above, the High Court quashed the First Information Report even before the police had commenced the investigation and no proceedings were pending in any court pursuant to the FIR. Here process of the court is given

38. 1982 SCC (Cri) 249.
39. AIR 1977 SC 2229. Here the investigation proceedings were quashed at the stage of investigation itself. Offences were in respect of indicipline inside the campus.
a strict interpretation by the Supreme Court of India meaning an action actually pending before the court of law in its anxiety to prevent abuse of the process of the court. The High Court cannot be overzealous to prevent the abuse of the process of the court which is initiated. There is no test to examine whether the process initiated amounts to abuse. When the contours of the power under section 482 of the Cr.P.C. is marked, it is evident that there is scope for discretion. The discretionary power to do justice in a judicial function or in quashing judicial proceedings, must be exercised very carefully, and in an upright manner.

In Union of India v. W.N. Chadha,40 the Supreme Court once again reminded one and all that quashing an FIR in a proceedings under section 482 Cr.P.C. is not congenial to the atmosphere of Rule of Law. When the proceedings are still pending, it is said that the case is at an interlocutory stage. Invoking inherent jurisdiction at an interlocutory stage would be against the accepted tenets of the inherent jurisdiction. But, in Madhu Limaye v. State of Maharashtra,41 an instance of positive application of inherent jurisdiction was discussed by the Supreme Court of India. Here proceedings were initiated illegally and without jurisdiction. So the court held that the argument that inherent jurisdiction should be invoked sparingly and in the rarest of rare cases does not preclude the High Court from exercising it in circumstances glaringly calling immediate and stern action. However, in the name of preventing the abuse of the process of the court, the inherent powers could not be exercised to stifle a legitimate prosecution.

40. AIR 1993 SC 1082.
41. AIR 1978 SC 47.
So, in *Janata Dal v. H$ Choudhary and others*\(^{42}\) Supreme Court castigated the High Court for adopting an extreme view of taking judicial notice of the illegalities did by any court. Here also, investigation was in its embryonic stage. The High Court took *suo-motu* cognizance and proceeded with the matter stepping into the shoes of the accused party. This is not an exercise of discretion but an exercise of discrimination.

"The power possessed by the High Court under section 482 of the Code are very wide and the very amplitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principle.

The High Court being the highest court of a State is normally restrained from giving a premature decision in a case wherein the entire facts are extremely indifferent and hazy more so to the evidences which has not been collected and produced before the court and to issues involved where factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material."\(^{43}\)

In *Central Bureau of Investigation, SPE, SIU\((X)\), New Delhi v. Duncans Agro Industries Ltd.*,\(^{44}\) the Supreme Court considered possibilities of applying inherent powers for quashing the complaint at the threshold. The High Court is to consider whether on the face of an allegation a criminal offence is stated. It need not

\(^{42}\) 1993 A.I.R. S.C. 892.

\(^{43}\) Taxman's *Criminal Major Acts, Law and Practice*, at p. 1. 518

\(^{44}\) AIR 1996 SC 2452.
scrutinise all the allegations for the purpose of deciding whether those allegations are likely to be upheld in trial.

vi. Abuse of the process is to be prevented for securing the ends of justice

These dual principles are conditioned by the larger principles of due process of law and constitutionality. The objective of criminal law should be to obtain social harmony and not disharmony. Court proceedings are to be viewed with a zeal for administration of justice and not injustice. Keeping a proceedings pending for an inordinately long period itself is an abuse of the process of the Court. *Santhosh De v. Archna Guha and others*,\(^45\) was a case where after being committed to sessions court in 1974 and charge framed in 1983, the High Court was well within the ambit to quash the proceedings as gross abuse of the process of the court was branded on the face of the proceedings itself. In *Punjab National Bank and others v. Surendra Prasad Sinha*,\(^46\) the complaint filed without any *prima facie* case motivated to harass the petitioner for vendeta was rightly quashed. The Magistrate had a duty cast upon him to find that there was enough material to satisfy the requirements of law, while proceeding against a person. A private person shall not be allowed to take advantage of the situation. In the above case, abuse of the process was detected. In *S.G. Nain v. Union of India*,\(^47\) a prosecution under section 10(4) of the C.R.P.F. Act 1949, and section 409 of the Indian Penal Code was quashed. The matter was pending for 14 years. In such

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45. AIR 1994 SC 1229.
46. AIR 1992 SC 1815.
47. AIR 1992 SC 603.
circumstances, the trial after such a prolonged period would not be fair. Interest of justice should take precedence over interest of prosecution. In the instant case, prosecution had justification because an appeal was pending in the Supreme Court against the order of the High Court declining to quash the prosecution. This was not the reason for letting the case de-generate into an abuse of the process of the court. Thus the concept of abuse of the process of the court as a ground for invoking the inherent powers under section 482 is a relative concept which depends heavily on the facts and circumstances of each case.

In the pretext of preventing the abuse of the process of the court, the High Court cannot quash a criminal trial without conforming to reasonable opportunity of the prosecution. The High Court is not to anlyse evidence while adjudicating an application under section 482 of the Code of Criminal Procedure. The Supreme Court held so in State of Bihar v. Raj Narain Singh. The High Court cannot quash a criminal trial without conforming to reasonable opportunity of the prosecution. The High Court is not to analyse evidence while adjudicating an application under section 482 of the Code of Criminal Procedure. The Supreme Court held so in State of Bihar v. Raj Narain Singh. In Palaniappa Gounda v. State of Tamilnadu and others, the question considered was availability of inherent powers in circumstances covered by specific provisions of the Code. The High Court held that the provision under Section 357 of the Code of Criminal Procedure contemplates application for compensation. Yet, the court here invoked inherent powers inspite of specific provisions. In the interest of justice, the High Court need not be hyper technical. Instead of rejecting a petition under section 482 Cr.P.C., the High Court can exercise inherent powers to allow a

49. Ibid.
50. AIR 1977 SC 1323.
petition under section 357 of the Code.

Administration of justice requires adherence to reasonableness and an objective correlative. In *State of Karnataka v. L. Muniswami and others*, the proceedings which made some among the accused persons stand trial and discharged the rest was challenged. This case is a remarkable event marking an achievement of inherent powers. The Supreme Court conceded the wholesome power. The High Court under section 482 Cr.P.C. is entitled to quash a proceedings if it came to the conclusion that allowing the prosecution to continue could be an abuse of the process of the court. The discretion of the court is to be applied in a constructive and meaningful manner. For this purpose, the High Court can go into the reasons given by the sessions judge in support of his order and determine the facts and circumstances of the case. Similarly, if the allegations in the complaint or charge sheet do not constitute any offence, the High Court is entitled to quash the proceedings by exercise of inherent powers. Therefore, the question is whether the allegation set out in the complaint constitute any offence. In *Smt. Chandh Dhawan v. Jawaharlal & others*, the honourary secretary of a club is alleged to be guilty of offences under sections 54(a) and 57(a) of the Bihar and Orissa Excise Act. The allegation was that women were employed by the club and cabare dance was performed in the club where liquor was being consumed by the public. Such vague and casual allegations would not constitute an offence. In the instant case the High Court had rejected the application for

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51. AIR 1977 SC 1489.
52. AIR 1992 SC 1379.
invoking power under section 482 of the Criminal Procedure Code. The Supreme Court filled the bill where the High Court failed to get the situation in a correct perspective. The Supreme Court held in the above case that the High Court while exercising inherent jurisdiction is not expected to look beyond what is contained in the complaint to form a *prima-facie* opinion. Apart from this, hard and fast rules cannot be adumerated. In a case, the High Court quashed the process issued by the trial court; on additional materials filed by the accused. These materials were not available to the Magistrate while issuing the process.

vii. **No Evaluation of Evidence**

The cumulative effect of the Supreme Court decisions is that while exercising inherent powers, the High Court shall not attempt an evaluation of evidence as if, in an appeal case. The process of the Court shall not be abused. At the same time, this was not to be a reason for staying a proceedings. In *M/s Jayant Vittamins Ltd. v. Chaithanya Kumar and another*,53 the Supreme Court held that while investigation into offence is still in the way, the High Court by exercising the power cannot quash the proceedings. Similarly, inherent powers under section 482 of the Cr.P.C. cannot be used for quashing prosecution on the ground of malafides. *State of Maharashtra v. I.shwar Piraji Kalpathri and others*,54 is an instance. Here according to the Supreme Court, the High Court could not offer any credible material for reaching a conclusion for quashing the proceedings on the ground of malafidases at the stage of FIR or complaint. If at all such a decision is made, the

54. AIR 1996 SC 722.
probability, reliability and genuineness of the allegation, are to be examined. The Supreme Court reversed the decision of the Bombay High Court holding that the truthfulness of the allegation and the establishment of the guilt could only take place when the trial proceeded without any interruption. The principle that emerges is that abuse of the process of the Court is not a blanket ground given to the High Courts to interfere under Section 482 of the Criminal Procedure Code. The process of the court is kept free of pollution by an exercise of inherent powers. Though, it is to be applied with circumspection, the power given to the High Courts helps the administration of criminal justice presumably free from vitiating and malignant influences.

viii. Power Otherwise to Secure the Ends of Justice

The concept of justice has received a face-lift with the advent of a dynamic judiciary in India. Every aspect which has a bearing on the rights of the persons has been explained under the aura of judicial creativity. This has prompted Prof: Upendra Bhakshi to comment that judges in India have not only been amending the Constitution, but also re-drafting the Constitution in certain vital areas. This tempo is reflected in the administration of criminal justice also. Power of the High Court to invoke inherent powers under section 482 of the Code of Criminal Procedure is to be viewed in this context. In State of Karnataka v. L. Muniswamy, the Supreme Court has held that the High Court while invoking inherent powers is called upon to do justice between the State

55. Prof. Upendra Baxi: "Constitutional Quiksands of Keshavandanda Bharati and the Twentyfifth Amendment" (1974) 1 SCC 45

56. AIR 1977 SC 1489.
and subjects. The judgment has properly realised the width and contours of the inherent jurisdiction. The purpose of inherent powers in its entirety is to achieve higher standards of justice. Justice in not a romantic ideal, but, a pedantic reality. Therefore, ends of justice are to be secured. Before annotating the method and function of the High Court in securing the ends of justice, the word 'Ends' has to be kept in a proper respective. It has great currency in the philosophic parlance. The word 'Ends' means, objective, aim, ideal, standards etc. It means the goodness that is wished for in any administration. If ends of justice are to be secured injustice should be excluded. For excluding injustice inherent powers are exercised. The High Court is called upon to discharge its unenvious function.

ix Justice According to Law

"The ends of justice are higher than the ends of mere law and that justice has got to be administered according to laws made by the Legislature"57

Once the situation is realised to be one crying for justice no bar imposed even by the Code or any other statute can bridle the inherent powers of the High Court. In Velayudhan v. Sukumar58 the Kerala High Court held that where the interference of the High Court is absolutely necessary then nothing contained in sections 397 (3) and 399 (3) of Cr.P.C. would limit the inherent powers.

In the modern State where activities of the Government are umpteen, the liability created under laws innumerable, there is

58. 1978 KLT 301.
every chance for citizens being exposed to the vagaries of the State. Therefore, under the Constitutional scheme, with its jurisdictional expanse, historical significance, and territorial access, the High Court is to act as a happy meeting place for the State and the citizens, the Prosecutor and the accused, the petitioner and the respondent etc. In the matter of administration of justice, the High Court is called upon to examine the functioning of the Magistrate Court and other subordinate courts, by invoking the inherent powers. If a person is charge-sheeted for an offence without sufficient facts for the summons, if a complaint is filed against a person on frivolous and vexatious grounds, if a purely civil matter is left to be agitated in the criminal court, if an FIR is lodged on conjectures and hypothesis, the remedy for the affected persons ought not to be before the trial Magistrate as the victim's very fundamental rights are thwarted. Therefore, he is entitled to approach the High Court under section 482 Cr.P.C. so that ends of justice are secured by the High Court. The loose term that is, ends of justice, used in the section connotes the residuary aspect of power left untouched by other provisions of the Code.

"The authority of the court existed for advancement of justice and if any attempt has made to abuse that authority, the court must have power to prevent it" 59

x. **Meaning of 'Ends of Justice'**

Naturally, the question that is posed to ourself is what is meant by ends of justice. Justice is a relative term. One cannot say that ends of justice is secured when a person is acquitted, nor can we

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say that ends of justice is satisfied when a person is convicted. More difficult is to say whether ends of justice suffer when a person is asked to appear before a court through a summons issued by the court. So, section 482 Cr.P.C. provides for an occasion to come to the High Court directly without regard for the evidence in the case and without waiting for the trial to complete. The very entry of the aggrieved person to the court room with a petition under section 482 of the Cr.P.C. is to invoke the power of the High Court so that trial magistrate is enlightened of the requirements of justice. The concept of justice has undergone a sea change. It has shed all formalism. Even when the High Court is considering a petition under Article 226, or 227 of the Constitution of India, the High Court has got inherent powers. If the exigency of circumstances demands, the High Court can convert such a petition into an application under section 482 of the Cr.P.C. The latest thinking of the Supreme Court of India in this context is that, by whatever names petitions are called, the objective is the same - ie to secure the ends of justice.

"What is in a name, that which we call a rose by any other name, would smell so sweet"60.

If ends of justice is the ideal to be achieved in the administration of justice, the petitions filed can be under section 482 Cr.P.C. or under articles 226, 227 and the same can be described under any nomenclature. In *Pepsi Foods Ltd. and another v. Special judicial Magistrate and others*61 the Supreme Court has upgraded the prestige of the High Court while invoking the inherent jurisdic-
tion. Whether it is dispensing justice through the extra ordinary writ jurisdiction or extra-ordinary jurisdiction of inherent powers the High Court has to do the same. The court cannot be technical and prosaic in its attitude. The power given under Article 226 and section 482 Cr.P.C. contains a high doze of discretion. But, a discretionary power is not to be exercised to entertain every Tom, Dick and Harry who come to the High Court. At the same time the court shall not be averse to exercise the power when justice is in peril.

"Provisions of Articles 226 and 227 of the constitution and section 482 of the Code are devised to advance justice and not to frustrate it. In our view, the High Court should not have adopted such a rigid approach which certainly has led to mis-carriage of justice in the case. Power of judicial review is discretionary, but this was a case where the High Court should have exercised it"62.

In the matter of the exercise of inherent powers the High Court is to examine a situation with a judicially trained mind to see whether there is any thwarting of the interest of justice. Ends of justice is a concept capable of having its effect on both ways. The power is exercised only to secure the ends of justice. By exercising the power, ends of justice should not be blasted. In Rupan Deol Bajaj v. K.P.S. Gill,63 the Supreme Court of India, considered the quashing of an FIR by the Punjab and Haryana High Court invoking the power under section 482 of Cr.P.C. The top most police officer in the State was involved in an offence

62. Id. at p. 762.
63. AIR 1996 SC 309.
under sections 354, and 509 of I.P.C. The victim was an I.A.S. officer. When the FIR was lodged and the investigation was still in its infancy the accused approached the High Court and got remedy by invoking inherent powers. The Supreme Court viewed this attitude of the High Court with great seriousness not only for quashing the FIR, but also for the comments made by the High Court while disposing of the matter. The Supreme Court had expressed its anguish in the attitude of the High Court which least subservient the ends of justice.

"We are constrained to say that in making above observations, the High Court has flagrantly disregarded unwillingly we presume-the settled principles of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegation made.....

For the reasons aforesaid, we must hold that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, we set aside the impugned judgment and dismiss the petition filed by Mr. K.P.S. Gill, in the High Court under section 482 of Cr.P.C." 64

The Supreme Court has used strong words against the callous way in which the High Court had gone around with the invocation of inherent powers. It was a case where ends of justice was not secured. According to the Supreme Court, the High Court could have atleast consulted Supreme Court's decision in State

64. Id. at p. 315.
of Haryana and others v. Bhajan Lal and others.\textsuperscript{65} In this case it was stated that an FIR or a complaint may be quashed, if the allegations made therein, are so absurd and inherently improbable that no prudent person can ever reach a just conclusion. In a case like the one discussed Rupan Deol Bajaj's case, having a great bearing on the psyche of the Society the High Court ought to have taken extra-care rather than going on a tangent. Issues like outraging the modesty of a woman, terrorism, narcotics, etc, are those eating into the vitals of the society. When interfering in this, the court must be very vigilant lest the judiciary itself shall be painted in shadowy colours. In \textit{State of Orissa v. Bansidhar Singh},\textsuperscript{66} again the Supreme Court had occasion to consider the attitude of the High Court, in invoking the inherent powers on an overzealous proportion. This is projected in the body of the judgment. The Supreme Court stresses the point that the High Court must be very careful in invoking inherent powers under section 482 of Cr.P.C.

xi. \textbf{Justice Delayed is Justice Denied}

Justice delayed is justice denied, and justice hurried, is justice buried, it is often said. But, if justice is way laid, in the course of the judicial process, it only leads to disharmony in the society. The High Court is not expected to dive deep into the details of the case, and labour to come to a decision. In \textit{State of Madhya Pradesh v. Harsh Gupta},\textsuperscript{67} the Supreme Court held that the High Court cannot examine the defences in detail in a section 482

\begin{itemize}
\item \textsuperscript{65} 1992 Supp (1) SCC 335.
\item \textsuperscript{66} AIR 1996 SC 938.
\item \textsuperscript{67} 1998 SCC (Cri) 1723.
\end{itemize}
Cr.P.C. proceedings. The High Court is only expected to look into the complaint and see whether there is *prima-facie* case or not. Similarly, in *Asok Chaturvedi and others, v. Shitulh Chanchani, and another*, the Supreme Court held that the power under section 482 has to be exercised sparingly and in the interest of justice. Here, the Supreme Court accepted the approach of the High Court in exercising the power under section 482 of Cr.P.C. in a case where criminal proceedings continued, even when the allegations in the complaint did not make out any offence. Thus, "giving effect to the orders passed under Code", "preventing abuse of the process of the court" and "securing the ends of justice" are convertible terms. Justice is being given priority. In *Jawaharlal Dharda and others v. Manohar Rao Ganapat Rao Kapsikar and another*, the controversy was regarding a report in the newspaper 'Daily Lokmath'. Proceedings were initiated for offences under sections 499, 500, 501, and 502 read with section 34 of I.P.C. for defamation. The High Court interfered with the proceedings, but the Supreme Court held that the High Court had taken a technical view and committed an error in interfering in the matter. The power of the High Court to secure the ends of justice is the expression of the jurisdiction of the High Court in its absolute term. In the Code the notations of the inherent powers are developed through the above three phrases connected by the conjunction 'or'. The concept of justice is incorporated as forming an important ingredient of inherent powers. The chief aim of inherent powers is to secure the ends of justice. The concept of justice has social, political and ethical dimensions.

68. 1998 SCC (Cri) 1704.
While elaborating the philosophy of administration of justice, Sri. V.D. Mahajan in his book "Jurisprudence and Legal Theory", draws supportive statements from authorities. Justice administration is closely related to the civilizational achievement of a nation. Prof. Sidgwick states as follows:

xii. **Realisation of Justice in Administration**

"In determining a nation's rank in political civilization, no test is more decisive than the degree in which justice as defined by the law is actually realised in its juridical administration"\(^70\).

Salmond even defined law, "As the body of principles recognised and applied by the State in the administration of justice"\(^71\).

Blackstone suggested that the administration of justice is not the mercy of the King, but the duty of the King:

"Justice is not derived from the king as his free gift but he is the steward of the public to dispense it to whom it is due. He is not the spring but the reservoir from whence right and equity are conducted by a thousand channels to every individual"\(^72\)

The administration of justice being a mark of civilization is a social, political, historic and legal necessity, it is required to keep man as man, because without justice, man would be like wolves. Jeremy Taylor makes an assessment thus:-

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71. Ibid.
72. *Id.* at p. 129.
"A herd of wolves is quieter and more at one than so many men, unless they all have one reason in them or have one power over them"73

According to Prof: Mahajan, the origin and growth of administration of justice is identical with the origin and growth of man.

"The social nature of man demands that he must live in society; while living so, man must have experienced a conflict of interests and that created the necessity for providing for the administration of justice"74

In the organization of the modern State, the old principle of "a tooth for a tooth, an eye for an eye, and a life for a life" is displaced by cannons of justice. Legal justice ensures uniformity and certainty. There are several theories regulating the administration of justice. This being the significance of justice administration, inherent powers occupy a very valuable place in the arena of the administration of justice.

xiii. **Power and Dignity of the Court: All Aspects of Inherent Power**

A court of law must not be powerless to conduct itself. The dignity and decorum of the court is to be asserted. Its process should be complied with. Any action to subvert the functioning of the court is to be curtailed by the court itself. The procedure in the court must be legal, regular and relevant. The forum of judiciary shall not be used to settle scores for private vengeance. Every move in a court must be in the direction of the attainment

73. *Id.* at p. 129.
74. *Id.* at p. 130.
of the ends of justice, and not to stifle the same.

Preventing the abuse of the process of any court is the core of inherent powers. The exposition of inherent powers in section 482 Cr.P.C. is to be on a three dimensional perspective, i.e., inherent power to pass orders as may be necessary to give effect to any order under the Code, power to prevent abuse of the process of any court, and power otherwise to secure the ends of justice. The inherent powers remain independent of the powers in other provisions of the Code. Nothing can be deemed to limit or affect the inherent powers. One cannot create a legal fiction against inherent powers. It is total and absolute, it is invulnerable and inviolable. Giving effect to any order under the Code or preventing the abuse of the process of the court or securing the ends of justice all these statutory provisions in effect speak of one thing—keeping the administration of justice clear and clean. Even though the power is there for the High Court it is not open to the mere asking. There must be glaring illegality in the action challenged. Seizure of articles without warrant is normally deprecated. But in *Ouseph v. State of Kerala*۵ ۷۵ seizure of utensils and other materials used for making illicit liquor was held not attracting the inherent powers of the High Court. The Court had relied on *R.P. Kapoor v. State of Punjab*۶ ۷۶ Similarly inherent powers under section 482 Cr.P.C. can be invoked only when there is no express provision to redress the grievance of the petitioner. Similarly the issue involved shall not be trivial or doubtful but must be grave and clear۷۷.

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۵. ۱۹۸۰ KLT ۸۲۷.
۶. AIR ۱۹۶۰ SC ۸۶۶.
Abuse of the process of any court means any criminal court. Any Criminal court, subordinate to a High Court, if entertains a cause wholly unjust or patently erroneous proceedings, it is abuse of the process of that court. A court of law is a hallowed place which is sacrosanct, and the sacrodotal medium of criminal judiciary cannot be open to persons who come with frivolous and vexatious causes, to persons who seek prosecution of another on trifles, to persons who seek private vengeance and retribution. A trial Magistrate may be swayed by a bunch of facts to issue summons to a person. The state and its organs like police and prosecutor may fall upon innocent individuals. A complaint without disclosing *prima-facie* an offence may be acted upon. The person who suffers "the slings and arrows' of the process of the court becomes a victim of irrelevant and extraneous factors which set the criminal law in motion. It is true that every crime is a wrong against the society. Since society is an unorganized mass devoid of any mechanism to guard itself, the State steps in as its guardian. The wrong against the society is corrected by the State by punishing the wrong doer. But, if the so called wrongdoer is a person "more sinned against than sinning", and he is made to stand trial owing to the private hatred of another person, here also the society is to bear the burnt of such instances of injustice. It is an instance of abuse of the process of the court. For instance while passing an order under section 107 of the Procedure Code the Magistrate must ascertain the possibility of breach of peace. The Magistrate is to act reasonably and in good faith only. But in *Peethambaran v. State of Kerala* it was held that the

78. William Shakespeare, *King Lear*, Act III Scene 2 Line 57-60
79. 1980 KLT 876.
materials before the Magistrate were insufficient to support the action and the High Court had no option but to interfere.

If the court before which the proceedings are pending cannot read between the lines and is to go on with the proceedings there ought to be a superior court with a superior power. In the province of criminal law jurisdiction in India the High Court's inherent powers are expected to prevent the abuse of the process of any court. "The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceedings ought not to be permitted to degenerate into a weapon of harassment or prosecution"\textsuperscript{80}.

Providing protection to the lives and property of individuals by prosecuting and punishing the accused at the instance of the state is a measure of logic and legitimate expectation. There is the other side of the picture. That is, the prosecution of a person, against whom no \textit{prima-facie} case exists as per the ingredients of the offence in the statute and as per the materials available, is unwarranted; whereas, protecting the interest of that person is also of paramount importance. This is necessary to call adjudication blemishless. It is a fundamental requisite of any society which claims any strides in civilizational achievement.

"The State has always been a society where the strong rules the weak.... The collective will is a mere fiction which only serves to veil the brutal reality of facts".\textsuperscript{81}

\begin{flushright}
Mere presumption of innocence of the accused till the guilt is
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\textsuperscript{81} M. Duguit, \textit{Le Droit Objectif et la loi Positive} quoted supra. n. 3 at p. 71.
proved beyond reasonable doubts is not a sufficient safeguard in this context. Putting an innocent person to trial itself is ignominious. If the judiciary has an occasion to cry halt to a patently abusive process the administration of justice must be well modulated to prevent such injustice. The High Court therefore, would be justified in quashing the proceedings in the interest of justice, in a lame prosecution due to the very nature of the material on which the structure of the prosecution rests.

Abuse of the process of the court means putting the platform of judiciary for a malignant purpose or a mischievous purpose or as a part of machination. For this the High Court has inherent powers to keep the abuses of the process of the court at bay. Anything done by the court or proceedings pending in a court is the process of the court. In adjudicating parlance abusing the process of the court implies a proceedings which lacks in bonafides and is frivolous, vexatious or oppressive. If allowing the proceedings to continue would be an abuse of the process of the court and the High Court feels that ends of justice requires to quash it, inherent powers can be exercised.

The inherent powers of the High Court to prevent the abuse of the process of the court itself is in the interest of justice. Anything done or said in the court must bear the stamp of legality. The Supreme Court has set the tone for the High Courts to base its reasoning while exercising inherent powers. Converting a civil dispute into a criminal case is abuse of the process of the court.

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84 State of Karnataka v. L. Muniswamy others, AIR 1977 SC 1489.
85 Sardar Trilok Singh and others v. Satya Deo Tripathi, (1979) SCC (Cri) 987.
So far as civil disputes are concerned the appropriate form for their redressal is that of the civil courts. Initiating the process of the criminal court for grievances relating to civil disputes is a ground for invoking the inherent powers of the High Court. For instance a complaint arising out of breach of contractual obligation is a dispute of civil nature. In *Hariprasad Chamaria v. Bishunkumar Sureka & others*, the Supreme Court held that in such cases criminal proceedings are not sustainable. The order of the Patna High Court quashing the proceedings for offences under section 420 IPC was upheld by the Supreme Court. Similarly the dispute between the hire purchaser and purchasee is of essentially civil nature. In *Sardar Trilok Singh and others v. Sathya Deo Tripathi*, when the High Court declined to quash the complaint alleging offences under sections 395, 468, 465, 471, 412 and 120-B, read with Sec 34 IPC, the Supreme Court quashed the complaint holding that it was an abuse of the process of the Court.

A civil dispute cannot be converted into a criminal case. In *Chandrapal Singh and others v. Maharaj Singh and another* the Supreme Court quashed the proceedings initiated through complaint alleging offences under Section 193, 199 and 201 IPC. The High Court had declined to quash the complaint. In this case, the landlord after losing his case in civil courts implicated the tenant in frivolous criminal prosecution. The Supreme Court held that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the

86. 1973 SCC (Cri) 1082.
87. 1979 SCC (Cri) 987.
88. 1982 SCC (Cri) 249.
criminal court.

Orders of maintenance for the minor child is a matter appealing to one's sense of justice. If paternity of the child is disputed the aggrieved party should go to a civil court to decide disputed paternity. Instead the High Court shall not by exercise of inherent powers quash the order of the Magistrate granting maintenance under Section 125 Cr.P.C. to the minor child. In *Smt. Dukhtar Jahan v. Mohammad Farooq*\(^89\) the Supreme Court held that the High Court erred in interfering with the order of the Magistrate. Supreme Court allowed the appeal and set aside the order of the High Court and restored the order of maintenance. The court left unanswered whether in an application under section 482 High Court can interfere with concurrent findings of courts below. In the present case the High Court had quashed only the order of maintenance where as in *Pratibha Rani's*\(^90\) case, the High Court had quashed the entire proceedings.

The facts of a case should have the ingredients of a criminal case. Matters arising out of the management of a trust is essentially of a civil nature. If the personal relation between the settler of the trust and the co-trustee and his wife is strained criminal proceedings initiated by the trustee against the office bearer of the trust would not sustain. In *Madhavarao Jivajirao Scindia and others v. Shambajirao Chandrojirao Angre and others*,\(^91\) the Supreme Court upheld the order of the High Court quashing a pro-

\(^89\) 1987 SCC (Cri) 237.
\(^90\) 1985 SCC (Cri) 180
\(^91\) 1988 SCC (Cri) 234.
ceedings alleging offences under sections 406 and 467, read with 34 and 120-B IPC and section 53 of Trusts Act, 1883.

The allegations shall not be far fetched to constitute an offence. In *Balkishan Das v. P.C. Nayar*\(^{92}\), the proceedings against the petitioner was under section 406 IPC for shortage of paddy and rice procured by him for FCI. The matter was already under arbitration. The Supreme Court was of the view that the matter being purely of a civil nature criminal proceedings cannot stand. The Supreme Court allowed the appeal and quashed the proceedings. The High Court had dismissed the petition.

When a matter is to be pursued in a civil court the proceedings in a criminal court is an abuse of the process of the court and the High Court can interfere. Offences alleged are under Section 361 and 363 IPC. In *Chandrakala Menon v. Vipin Menon*,\(^{93}\) the order of the High Court was upheld. The Magistrate passed an order to register a case against the father for taking possession of his daughter. According to Supreme Court the High Court was justified in interfering under Section 482 of Cr.P.C. The father being the natural guardian of the child could not be charged with the offence of kidnapping. If any dispute exists relating to the paternity of the child the same could be agitated before appropriate civil court.

The issue has the other side also. Pendency of a civil dispute need not always be a reason for quashing criminal proceedings. Even when civil case is pending parties may indulge in criminal

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92. 1991 SCC (Cri) 1055.
93. 1993 SCC (Cri) 485.
acts. Proceedings against such criminal acts would not amount to abuse of the process. In *A.E. Rani v. V.S.R. Sarma and others* the High Court had quashed the proceedings in which offence under section 380 IPC was alleged. A complaint was filed after filing final report by the police. The events occurred in respect of partition of property. Already a partition suit was pending. In the meantime the accused forcibly removed movable articles. The Supreme Court held that civil dispute of partition has nothing to do with the complaint and therefore it could not be quashed as abuse of the process of law.

But on the other hand the decision in the civil case can have a persuasive effect in the criminal case. The conclusion of a civil case can influence a criminal proceedings. In *Central Bureau of Investigation, SPE, SIU (X) New Delhi v. Duneans Agro Industries Ltd.*, the Supreme Court endorsed the view of the High Court. The High Court had quashed the complaint alleging offences under sections 409, 420, 467, 468 and 471 read with 120-B IPC. The Supreme Court dismissed the appeal and upheld the order of the High Court. In an act constituting both civil and criminal wrong the civil suit for recovery of dues was compromised. It was held that compromise amounts to compounding of offence of cheating. Similarly, there was delay in completing investigation. There was no action against the erring officials. The Supreme Court held that the High Court was justified in its order

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94. 1995 (1) SCC 627.
95. 1996 (5) SCC 591.
quashing the proceedings.\textsuperscript{96}

A complaint filed by the financier against purchasee of a truck who obtained decree against the financier not to take possession of the vehicle on the ground that no amount was due to the financier was an abuse of process of court. The court has absolute jurisdiction to quash complaint in respect of civil dispute even though FIR or complaint discloses \textit{prima facie} offence.\textsuperscript{97} In \textit{Bhim Raj Sharma v. State}\textsuperscript{98} it was held that no useful purpose would be served in continuing criminal proceedings based on a complaint under section 420 IPC about the documents forged in a civil transaction between the parties, when civil suit was compromised subsequently. Though the charge is non compoundable it cannot sustain because of the compromise.\textsuperscript{99} In \textit{Subramanium \& others v. State of U.P.}\textsuperscript{100} the effect of an order passed by the civil court in a matter which has both civil and criminal consequences was considered. The occupation of the tenant even after the expiry of the lease period cannot be deemed unauthorised in the light of the correspondence made to extend the lease and for the enhancement of rent. The initiation of criminal proceedings against the tenant, when he had obtained an order from a com-


\textsuperscript{97} \textit{Suresh Prasad Yadav v. S.K. Bawa}, 1992 Cri.L.J. 3192 (All).

\textsuperscript{98} 1992 Cri.L.J. 3977 (Del)


\textsuperscript{100} 1996 Cri.L.J. 929 (All)
petent civil court restraining the landlord's interference, establishes malafide intentions and ulterior motive.\textsuperscript{101}

But, the most difficult situation is for the High Court to come to a conclusion to hold that there is abuse of the process of the court and hence the inherent power is to be applied. Lest the High Court may go wrong, the Supreme Court goes on reminding that inherent powers under section 482 Cr.P.C. are extraordinary powers and it is not possible to lay down any precisely defined, sufficiently channelised and inflexible guidelines or rigid formulae\textsuperscript{102}. According to the Supreme Court myriad kinds of cases crop up as the engine of administration of justice is operated. In the same case different provisions of law are involved. In the instant case offences under section 339, 341, 342, 352, 354 and 504 IPC were to be examined at the incipient stage of the case through the microscope of inherent powers. Added to the above provision was the argument for invoking the defence under section 95 IPC. Of course, the High Court would be discharging an onerous function. While the High Court has power to exercise inherent powers to prevent the abuse of the process of court, the High Court itself is to be vigilant in not letting the process of the court being abused. Causing delay in trial is abuse of the process of the court. On the interference by the High Court shall at the initial or interlocutory stage of a criminal case causing delay in trial is unwarranted\textsuperscript{103}. This does not mean that High Court is barred from exercising the inherent powers for the reason that a sessions judge


considers the issue in revision. But, the High Court should not act as a second revisional court. It should not appreciate the merits of the case. While holding that the High Court has gone beyond the scope of the inherent powers, the Supreme Court has tried to set the issue in correct legal perspective through timely pronouncement.

In *Dhanalakshmy v. R. Prasanna Kumar and others*\(^{104}\), the Supreme Court has held:

"Section 482 of Cr.P.C. empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent powers to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offences of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under section 482"\(^{105}\)

But, this does not empower the High Court to proceed on a fishing expedition assessing, assuming or appreciating the probabilities and possibilities to arrive at a conclusion whether a conviction would be sustainable. In such a case, the High Court is clearly in error. The principles are clearly laid down by the Supreme Court. In the complaint, they can be only specific allegations. It shall consist of the ingredients of the offences. The complainant must get an opportunity to adduce evidence. In the ab-

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\(^{105}\) *Ibid.*
sence of circumstances to hold prima-facie that the complaint is frivolous when the complaint discloses the commission of an offence there is no jurisdiction for the High Court to interfere\textsuperscript{106}. The above principles are crystallized through a series of decisions of the Supreme Court. \textit{Sharada Prasad Sinha v. State of Bihar,\textsuperscript{107} Sardar Trilok Singh v. Satya Deo Tripathi,\textsuperscript{108} Municipal Corporation of Delhi v. Purushottam Das Jhunjhunwala\textsuperscript{109}}.

In \textit{State of Bihar v. Murad Ali Khan and others,\textsuperscript{110}} the Supreme Court had held that the High Court shall not usurp the functions of a Magistrate by embarking upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. The High Court is only to see whether abuse of the process of law is there.

"Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceedings at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet do not in law constitute or spell out any offence and that resort to criminal proceedings would in the circumstances amount to an abuse of the process of the

\begin{itemize}
\item \textsuperscript{106} Id. p. 48.
\item \textsuperscript{107} 1977 (1) SCC 505.
\item \textsuperscript{108} 1979 (4) SCC 396.
\item \textsuperscript{109} 1983 (1) SCC 9.
\item \textsuperscript{110} 1988 (4) SCC 655.
\end{itemize}
court or not"111

This being the atmosphere under which the High Court is to invoke inherent powers, entertaining a petition under section 482 Cr.P.C. itself can ultimately result in the abuse of the process of the court. If unconscionable delay in conducting the trial is abuse of the process of the court a period of twelve years is ground enough to interfere112. But, if the complainant is not responsible for such delay interference by the High Court is not palatable. And, if the contention regarding delay is not raised before the High Court, the High Court cannot assume things. A wrong application of inherent powers to quash a proceedings would only delay the trial. The matter would reach the Supreme Court and on interference by the apex court, like a "snake and ladder" game, the matter would be relegated to the Magistrate again. Regarding the slow motion of the Criminal Courts the Supreme Court had occasion to observe in Re Special Courts Bill, 1978113:

"The procedure is dilatory, the dockets are heavy, even the service of process is delayed, and still more exaggerating, there are appeals upon appeals and revision and supervisory jurisdiction baffling and balking speedy termination of prosecution".

In another case, the Supreme Court has found fault with the interference by the Superior courts, meaning High Courts, imput-

113. 1979 (1) SCC 380. By V.R. Krishna Iyer, J.
ing that it can lead to miscarriage of justice. According to the Supreme Court,

"The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. We are sad to say that repeated admonitions of this court have not deterred superior courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases were the interest of justice demand it, it cannot be a matter of course. It is to be appreciated that the inherent powers are most potential and its use should be for obvious and clear purposes. While the Supreme Court admonishes the High Court for interfering with the proceedings at its incipient stage, it does not mean that the Supreme Court perpetuates a lethargy towards this power. There are positive assertions by the Supreme Court where the High Court declined to interfere. Once, it is patent that the accused person is no longer liable under law it is futile to proceed against him. In G.L. Didwania and another v. Income Tax Officer and another, the Supreme Court in a special Leave Petition under Article 136 of the Constitution, quashed criminal proceedings initiated under section 277 of Income Tax Act. The High Court had declined to interfere under section 482 Cr.P.C. What prompted the Supreme Court was that Income Tax Appellate Tribunal had already allowed an appeal by the accused person. Therefore, the


115. 1995 Supp (2) SCC 724.
Criminal Proceedings under section 277 of the I.T. Act becomes a futile exercise. A futile proceedings is an abuse of the process of the Court. The Supreme Court has relied on the other decisions in support of this proportion, ie, *Uttam Chand v. Income Tax Officer, Central Circle Administrator,*116 and *P. Jayappan v. S.K. Perumal, First I.T. Officer, Tuticorin*117.

In *State of Karnataka v. Muniswamy and others,*118 the Supreme Court had adopted a positive approach. The Supreme Court projected the position that the saving of the High Court's inherent powers both in civil and criminal matters is designed to achieve a salutary public purpose. The court proceedings ought not to be permitted to degenerate into a weapon of harassment for prosecution. It was held that the ends of justice are high than the ends of mere law, though justice has got to be administered according to laws made by the legislature. The Supreme Court held that the High Court could under its inherent powers quash proceedings pending before the sessions judge on the ground of insufficiency of evidence. The Supreme Court had adverted to the previous decisions of the Apex court in this point119.

Any vitiating factor in a criminal trial is corrected through the application of inherent powers. Observance of the principles of natural justice and the 'audi alteram partem' rule is ensured through

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118. 1977 SCC (Cri) 404.
the inherent powers. In *Ram Narain v. State of Rajasthan*,\(^{120}\) in a pending proceedings alleging offences under sections 120-B IPC 408, 420 and 467 IPC an application filed to record additional evidence was dismissed. An order was passed without hearing the applicant. The Supreme Court allowed the appeal and the conviction of the appellant was quashed. Thus anything done to pollute the stream of justice would end in the acquittal of the accused. The ends of justice would require that nonobservance of the principles of natural justice would be discontinued.

In *Zacharia v. State of Kerala*,\(^{121}\) the legality of proceedings under section 386 Cr.P.C. was considered. The offences alleged were under sections 16 (1)(a) read with section 7(1) of the Prevention of Food Adulteration 1954. Before the trial court there were two accused. One of them was acquitted. An appeal was filed before the sessions court by the other accused. The person acquitted by the trial court was not a party in the appeal. The state had not filed any appeal against the acquittal. The case was remanded by the High Court. Proceedings could be initiated against one accused only. No action could be initiated against the person acquitted by the trial court. By allowing the application under section 482 of the procedure Code the High Court held that it is a fundamental principle that an adverse order cannot be passed against a person without giving an opportunity of being heard. If proceedings are initiated it is an illegality amounting to the abuse of the process of the court. In *Narayana Pillai and others v. Chacko*,\(^{122}\) Magistrate taking cognizance of the offence

\(^{120}\) 1973 SCC (Cri) 545  
\(^{121}\) 1986 KLT 272.  
\(^{122}\) 1986 KLT 1005.
on a complaint under section 499 I.P.C. by a person not aggrieved is an abuse of the process. The Magistrate is incompetent to proceed and in such cases the test whether the allegation does constitute an offence is not necessary. In other words there must substantial reason or grounds raised so as to interfere with the proceedings at the trial stage. In Bhujanga Swamy v. Subrahmonian,\textsuperscript{123} the court enumerated the circumstances when taking cognizance of an offence is illegal. They are (1) The complaint does not disclose any offence alleged. (2) Complainant is incompetent to set the law in motion. (3) Cognizance without previous cases, in cases where sanction is required under section 197 Cr.P.C. In the instant case though requirement of sanction was raised, the court was of the opinion that sanction under section 197 Cr.P.C. was not required. Therefore, it declined to exercise inherent powers to quash complaints alleging offence under section 500, read with 34 I.P.C.

The inherent powers are to be exercised by the High Court to secure the ends of justice. Arbitrary interference in the trial proceedings is not justified. An instance of such arbitrariness on the part of the High Court is interference made when trial proceedings have almost come to an end. A delayed application under Sec. 482 of the Cr.P.C. to the High Court for quashing the proceedings violates equity and hence deserves to be condemned. It was so held by the Supreme Court in Amar Chand Agarwala v. Shanti Bose, and another\textsuperscript{124}. In a proceedings alleging offences under section 120-B and 409 IPC the Calcutta High Court quashed

\textsuperscript{123} 1987 (1) KLT 481.
\textsuperscript{124} 1973 SCC (Cri) 651
the charge sheet. The Supreme Court relying on its earlier decision\textsuperscript{125} set aside the High Court's decision.

The declared policy of the court is that resorting to inherent powers itself should not end up in an abuse of the process of the court. While the power is available to secure the ends of justice, the party must approach the High Court through proper procedure. For instance a prisoner sends an application to invoke inherent powers to the Registrar of the Bombay High Court by post. The proper way should have been to route the application through the Superintendent of Jail and be countersigned by him. Rule 25 Chapter XXVI Bombay High Court Appellate file Rules 1960 provides for it. For noncompliance with that rule, the application was dismissed by the Bombay High Court. In \textit{Iqbal Ismail Sodawala v. State of Maharashtra},\textsuperscript{126} the Supreme Court upheld the decision by the Bombay High Court, holding that the provision for countersignature of the Jail Superintendent was to safeguard the court being mischeived by others. Inherent Powers shall not be used to interfere to make concession to such a provision\textsuperscript{127}.

Securing the ends of justice is a broad parameter adopted for the exercise of inherent powers. Justice is a relative concept. What is not required for securing the ends of justice can subsequently be a requirement for the ends of justice. So in filing an application for invoking inherent powers there is no bar in filing for the second time even if, the first one was dismissed. In

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\textsuperscript{125} \textit{R.P. Kapur v. State of Punjab}, AIR 1960 SC 866,
\textsuperscript{126} 1974 SCC (Cri) 764
\textsuperscript{127} The court also referred to the decision in \textit{U.J.S Chopra v. State of Bombay}, (1955) 2 SCR 94.
\end{flushleft}
Superintendent and the Remembrancer of Legal Affairs (W.B) v. Mohan Singh and others, the Supreme Court upheld the High Court decision quashing the charge-sheet filed under section 304-A read with section 109 I.P.C. The ban for the re-arraigning was that the second petition was filed on changed circumstances. There is no jurisdictional infirmity in entertaining a second petition and quashing the proceedings if there is an element of abuse of the process of the Court. This averment may sound unusual. The Supreme Court had dismissed several earlier appeals holding contrary view.

The High Courts have to put the ends of justice at the top of its judicial agenda. In its pursuit for securing the ends of justice the High Court has specific powers of continuous supervisory power under section 482 Cr.P.C. and revisional power under section 397 and 401 of the Code of Criminal Procedure. In section 401 of the Code of Criminal Procedure, the High Court can suo motu initiate action to enhance punishment in revision. The legality of such an action by the High Court was challenged in respect of an offence under section 61(a) of Punjab Excise Act. The High Court declined to exercise inherent powers and limited the application. The Supreme Court in Nadir Khan v. The State (Delhi Administration) upheld the decision of the High Court. It was held that the High Court as an effective instrument for the administration of criminal justice, keeping a constant vigil and where it

128. 1975 SCC (Cri) 156.
130. 1975 SCC (Cri) 622.
finds that justice suffered it takes upon itself as its bounden duty to *suo-motu* act where there is blatant abuse of the law.

Adverse remarks made in a judgment is a ground for invoking inherent jurisdiction to expunge such remarks. Here the issue of violation of the principles of natural justice is also involved. The relevant factors for consideration are those in respect of the necessity and legality of such remarks. The Supreme Court has laid down three tests in *State of U.P. v. Mohammed Naim*¹³¹. They are (1) the person must have an opportunity to defend his act. (2) There must be evidence on record to justify the remarks. (3) The remarks must be the integral part of the decision without which it will not sustain. Relying on these tests the Supreme Court dismissed an appeal filed by a judicial officer seeking to expunge the remarks made by the High Court in its judgment. The judicial officer had issued notice to an advocate under section 476 Cr.P.C. in respect of a false affidavit filed by a surety. The Supreme Court in the said decision, *R.K. Lakshmanan v. A.K. Sreenivasan and others*,¹³² was of the opinion that the adverse remarks were to be retained in the judgment.

In securing the ends of justice technicality should be avoided. In *Deepak Sarkar and another v. State of Bihar and another*,¹³³ the High Court declined to quash the charge sheet in proceedings initiated under Prevention of Food Adulteration Act, 1954. The chief reason for the High Court not to entertain the applications was that the applicant raised contentions which were not

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¹³¹. AIR 1964 SC 703
¹³². 1975 SCC (Cri) 654
¹³³. 1977 SCC (Cri) 128
pleaded in the petition. While allowing the appeal and setting aside the High Court order the Supreme Court held that questions of law though not pleaded can be allowed to be taken at the stage of arguments. The matter was remanded to the High Court.

In *Union of India and others, v. Haji Masthan Mirsa*, the preventive detention order quashed by the High Court was upheld by the Supreme Court. Here also, technicality is not allowed to subdue the force of inherent powers. The petition challenging detention after release was held to be proper. Detenue could not challenge the detention order owing to prevalence of emergency while he was under detention. It does not amount to estoppel against his right to move the court after his release. The inherent powers are preserved to secure the ends of justice. The impact of petition under article 226 of the Constitution or under section 482 of Cr.P.C. is same.

The ends of justice has two sides. While invoking the inherent powers the court should not be undermining the ends of justice. The Supreme Court in *Pratibha Rani v. Suraj Kumar and another*, held that if clear allegations consisting the offence alleged are made out the court should be reluctant to interfere. The prima-facie satisfaction is to be based only on the allegations made in the complaint taking them to be correct. What little relief the appellant obtained from the trial court was rendered nugatory by the High Court by quashing the proceedings. The Supreme Court restored the complaint to file.

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134. 1984 SCC (Cri.) 271
135. 1985 SCC (Cri.) 180
136. 1976 SCC (Cri) 507-The Supreme Court applied the dictum laid down in *Smt. Nagawwa v. Veeranna Shivalingappa Konjali*. 
A proceedings violating the principles of natural justice does not secure the ends of justice. The inherent powers of the High Court are saved to secure the ends of justice. But, the High Court itself should not violate the ends of justice. In *S.K. Viswambaran v. E. Koyakunju and others*, the Supreme Court expunged the remarks against a police officer in a proceedings in which he was not a party. This was against the settled principle. The Supreme Court held that not only the principles of natural justice were violated but also on merits also such comments were immaterial.

Abuse of the process of the court is a ground for invoking the inherent powers. While exercising such powers, the High Court shall not abuse the process of the court. The Supreme Court in *State of Karnataka v. Narsa Reddy*, has held that while exercising inherent powers the action of the High Court in splitting up trial of a case arising out of a common incident is not justified. Prosecution is to lead evidence against them in common. The case allegation of offence under section 302 and 201 read with 34 of I.P.C. and sections 3 and 4 of the Dowry Prohibition Act, 1961.

The inherent powers of the High Court shall not be to delay and defeat the cause of justice. In an application under section 482 Cr.P.C., if the High Court orders interim stay of criminal proceedings before the trial and if the stay is to continue for a long time, it would not serve the interest of justice. In *M.C. Mehta (II) v. Union of India and others*, the Supreme Court while consid-

137. 1987 SCC (Cri) 289  
138. 1987 SCC (Cri) 744.  
139. 1988 SCC (Cri.) 141
eriding the Public Interest Litigation against Ganga Water Pollution issued general directions to the High Court normally to decline to grant stay in such cases and speedily dispose of such cases. The complaint was alleging the violation of the provisions of Water (Prevention and Control of Pollution) Act, 1974 by the Industrialists.

Legislations containing special provisions for specific proceedings are not trammeled by the inherent jurisdiction of the High Court. Sections 20(B), 19(1) of the TADA (Terrorist and Disruptive Activities (Prevention) Act, 1987) make specific provision for bail. The Supreme Court in Usmanbai Dawoodbhai Memon and others, v. State of Gujarat,\textsuperscript{140} held that High Court is precluded from granting bail under section 439 and 482 of Code of Criminal Procedure.

High Court's forum is not for canvassing stale claims. In State of U.P. v. R.K. Srivasthava and another,\textsuperscript{141} the High Court had quashed an FIR, allegation of offences under sections 420, 468, 471 and 120 B IPC and Sections 5 (2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947. The Supreme Court upheld the decision of the High Court.

The High Court must appreciate the grievances of the complainant. A complaint was filed in respect of an offence under section 302 IPC. The High Court quashed the complaint. The ground was that, though in the complaint three persons were proceeded against, police filed challan in respect of only one per-

\textsuperscript{140} 1988 SCC (Cri.) 318
\textsuperscript{141} 1989 SCC (Cri.) 713
son for the same offences mentioned. The allegation in the complaint was the informant gave names of three persons but charge-sheet was only against one person. In *Manikantan v. Pandian and others*,\(^\text{142}\) the Supreme Court set aside the order of the High Court.

In *Dhanalakshmi v. R. Prasanna Kumar, & others*,\(^\text{143}\) the Supreme Court set aside the decision of the High Court. Complaint alleged offences under Sections 494, 496, 498A, 112 and 120B IPC. There were specific allegations of offences in the complaint containing ingredients of offences for which cognizance was taken.

In *P.M. Nalini v. K.M. Mathew*,\(^\text{144}\) the Supreme Court held it improper for the High Court to quash proceedings alleging an offence under section 500 IPC. The High Court quashed the proceedings without hearing the parties on point neither raised in application nor argued. If the High Court considered respondents enjoyed immunity it should give opportunity of hearing to the parties and allow them to adduce evidence by way of affidavits. It was held that the High Court should not express an opinion on merit at the stage of proceedings under section 482 Cr.P.C.

Inordinate delay alone is not sufficient for invoking inherent powers. In *Mangilal Vyas v. State of Rajasthan*,\(^\text{145}\) the Supreme Court held that the long pendency for 25 years is not sufficient ground for, termination of the proceedings. This view was upheld.

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\(^{142}\) 1990 SCC (Cri.) 203
\(^{143}\) 1991 SCC (Cri.) 142
\(^{144}\) 1991 SCC (Cri) 221
\(^{145}\) 1991 SCC (Cri.) 231
by the Supreme Court. An inordinately delayed case protract the travesty of justice and such Proceedings are to be quashed\textsuperscript{146}.

The question, whether it is correct on the part of the High Court to invoke the powers under section 482 Cr.P.C. in a proceedings under Articles 226 and 227 of the Constitution India was considered in \textit{State of Haryana and others v. Bhajanlal and others},\textsuperscript{147} the Supreme Court opened new vistas in the application of inherent powers by the High Court. The petition was under article 226. The FIR alleged offences under sections 161 and 165 of IPC and section 5(2) of the Prevention of Corruption Act. The Supreme Court came out with a diagnosis of the power of the High Court. Here the High Court had quashed the entire proceedings including the FIR. The Supreme Court disposed of the appeal by setting aside the High Court order and ordered fresh investigation. After examining the entire body of case of law, on the point the Supreme Court held that High Court's power to quash criminal proceedings should be exercised sparingly and in "the rarest of rare cases". The High Court is not to examine the reliability of the allegation made in the FIR or the complaint. The criteria must be to ascertain whether a \textit{prima facie} case is made out against the accused. The Supreme Court made certain enumerations and illustrations.

In \textit{Ravi Raman Prasad and another v. State of Bihar and others},\textsuperscript{148} the Supreme Court set aside the order of the High Court as it was gross abuse of the process of the court to have invoked

\begin{footnotes}
\item[146] State of U.P. v. Parshottam, 1991 SCC (Cri) 1016
\item[147] 1992 SCC (Cri.) 426
\item[148] 1993 SCC (Cri.) 489
\end{footnotes}
the inherent powers under section 482 of Cr.P.C. where the Sub Divisional Magistrate had dismissed a petition under section 145 of Cr.P.C.

On mistaken legal grounds the High Court shall not invoke inherent powers. The inherent powers must be applied on a rational and intelligible basis. Quashing of an FIR after filing the charge-sheet is not permissible. In *State of Punjab v. Dharam Vir Singh Jethi*, the Supreme Court set aside the decision of the High Court. The High Court had based its decision on the ground of delay in this FIR/Charge-sheet and as presumably thinking that the proceedings were hit by section 468, 469(b) and 473 of the Code. The fact that the offences alleged were not coming under the ambit of the above sections. The High Court's decision was likely to have an impact on the process and of the court and of the ends of justice.

In *Chetan Anand v. State of Punjab*, the Supreme Court endorsed the view of the High Court in not invoking the inherent powers in a proceedings under section 406 and 420 IPC. The Supreme Court held that even on a perusal of the order of the trial court and other documents no ground was made out.

Quashing the FIR and proceedings on a mechanical way is not the invocation of inherent powers. The High Court quashed the proceedings alleging offences under sections 354 and 509 IPC. In *Rupan Deol Bajaj and another v. K.P.S. Gill and another*, the Supreme Court reversed the order of the High Court. It was

149. 1994 SCC (Cri) 500.
150. 1994 SCC (Cri) 554.
held that while quashing an FIR the High Court must ascertain whether the allegations made therein are so absurd and inherently improbable to make such a conclusion by any prudent man as is held in Bhajan Lal's\textsuperscript{152} case. In the absence of such a finding the quashing of an FIR by the High Court is improper and a gross error of law\textsuperscript{153}.

Abuse of the process once convinced of, the proceedings should be quashed. The High Court should not have any diffidence. In G.L. Didwania and another v. Income Tax Officer and another,\textsuperscript{154} the Supreme Court reversed the decision of the High Court. The charge-sheet alleged offences under section 277 Income Tax Act 1961. Application under section 482 Cr.P.C. was dismissed by the High Court. Prosecution was initiated by Income Tax Dept. for making a false statement. The Appellate Tribunal set aside the assessment against the appellant (Petitioner). The finding of the Appellate Tribunal was conclusive and the prosecution could not be sustained. The criminal proceedings were liable to be quashed\textsuperscript{155}.

A complaint filed without considering relevant aspects is liable to be quashed. In State of Punjab v. National Organic Chemi-

\textsuperscript{152} State of Haryana and others v. Bhajanlal and others, 1992 Supp. (1) SCC 335.
\textsuperscript{153} Supreme Court had referred to Abinamd\textsuperscript{a} Jha and others v. Dinesh Mishra, AIR 1968 SC 117; and relied on Bhagvant Singh v. Commissioner of Police and another, 1985 SCC Cri. 267 and State of Haryana v. Bhajanlal and others 1992 SCC Cri. 426.
\textsuperscript{154} 1995 Supp. (2) SCC 724.
Call Industries Ltd., the High Court had quashed the complaint and the Supreme Court upheld the High Court order on different grounds. Allegation was offences under sections 21, 22 and 24 of the Insecticides Act, 1968. But, there was nondelivery of one portion of sample to the person from whom the insecticide was taken. There was also denial of statutory rights to get the sample tested. The Supreme Court observed that a complaint should be lodged with utmost dispatch and any delay would result in quashing the complaint.

If an allegation does not make out an offence continuation of proceedings would be abuse of the process. In Guru Bipin Singh v. Chongtham Manihar Singh and another, the Supreme Court quashed a complaint which the High Court declined to quash applying inherent powers. Offence alleged were under sections 465 and 468 read with section 420 IPC. Complaint was that appellant published a forged book by stating that it was in the manuscript of King Bhaga Chandra. There was no allegation that the accused had himself written the book. According to the Supreme Court there was no case of forgery and consequent cheating. So complaint was liable to be quashed.

Entertaining a baseless complaint is abuse of the process of the court. A Sessions Court quashed the proceedings in revision. The High Court restored the complaint in section 482 Cr.P.C. The Supreme Court set aside the order of the High Court and restored the sessions court order. In Jawaharlal Darda and oth-

156. (1996) 11 SCC 613
157. (1996) 11 SCC 622
ers v. Manohar Rao Ganapat Rao Kapşkar and another,\textsuperscript{158} the Supreme Court held quashing the proceedings by the Session Court to be correct. Prosecution was initiated for defamation. Publication of a news item disclosing accurate and true report of proceedings of Legislative Assembly. The news item was published in good faith for public good, believing the statement to be true. The order of the Additional Session Judge, quashing the proceedings was held to be correct.

\textsuperscript{158} 1998 SCC (Cri.) 815.