

RMM LAW COLLEGE SAHARSA

CODE OF CRIMINAL PROCEDURE

IIIrd Part

Paper -3

**TOPIC- PROVISIONS AS TO
ACCUSED PERSONS OF**

Topic- Miscellaneous

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482. Saving of inherent power of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

COMMENTS

- (i) When the investigation of the case had been handed over to the CID because of unsatisfactory investigation by the police, the quashing of charges under section 302 read with section 120B, IPC against the accused in exercise of powers under section 482 by the High Court on the conclusion of the inadequacy of evidence was unwarranted as at the stage of framing of charges, meticulous consideration of evidence and material by the Court was not required; Radhey Shyam v. Kunj Behari, (1990) Cr LJ 668 (SC) : AIR 1990 SC 121.
- (ii) In exercising jurisdiction under section 482 High Court would not embark upon an enquiry whether the allegations in the complaint are

likely to be established by evidence or not; *State of Bihar v. Murad Ali Khan*, (1989) Cr LJ 1005: AIR 1989 SC 1.

- (iii) To prevent abuse of the process of the Court, High Court in exercise of its inherent powers under section 482 could quash the proceedings but there would be justification for interference only when the complaint did not disclose any offence or was frivolous vexatious or oppressive; *Dhanlakshmi (Mrs.) v. R. Prasana Kumar*, (1990) Cr LJ 320 (DB): AIR 1990 SC 494.
- (iv) Where there was some discrepancy mainly in regard to the implications of respondent by name in the FIR and the statement of the witnesses recorded during the investigation, the practice of prejudging the question by the High Court without affording reasonable opportunity to the prosecution to substantiate the allegations have on more than one occasion been found fault with by the Supreme Court, Thus there is no justification by the High Court to interfere with the prosecution at the preliminary stage; *State of Bihar v. Raj Narain Singh*, (1991) Cr LJ 1416 (1417) (SC).
- (v) If the allegation made in the First Information Report are taken at their face value and accepted in their entirety do not constitute an offence the criminal proceedings constituted on the basis of such FIR should be quashed; *State of Uttar Pradesh through CBI, SPE Lucknow v. R.K. Srivastava*, (1989) Cr LJ 230: AIR 1989 SC 2222.
- (vi) It amounts to abuse of the process of the Court if without prima facie case having been made out a person is summoned to face trial in a criminal proceeding; *Laloo Prasad v. State of Bihar*, (1997) 2 Crimes 498 (Pat).
- (vii) It is well settled that the inherent powers under section 482 can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power

being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind there will be no inconsistency between sections 397(2) and 482 of this Code; *Basudev Bhoi v. Bipadabhanjan Puhān*, (1997) 2 Crimes 331 (Ori).

- (viii) If the prosecution has been instituted within six months of Bengal Excise Act, 1909 under section 92 alleged there is no question of producing any sanction as the Magistrate would then be free to take cognizance under the Act. Reasoning adopted by the learned Single Judge that steps for obtaining sanction should have been adopted before the expiry of first six months period has no support in section 92. Quashing of proceeding not proper; *State of West Bengal v. Rashmoy Das*, AIR 2000 SC 228.
- (ix) Necessary ingredients of offence of cheating or criminal breach of trust have not been made out but the attendant circumstances indicate that the FIR was lodged to prompt the filing of criminal complaint against the informant under section 138 N.I. Act Quashing of FIR was proper to avoid the abuse of process; *Sunil Kumar v. Escorts Yamaha*, AIR 2000 SC 27: 2000 Cr LJ 174 (SC).
- (x) FIR lodged to preempt the filing of criminal complaint against the informant under section 138 N.I. Act Quashing of FIR proper, (See also AIR 1992 SC 1815); *Sunil Kumar v. Escorts Yamaha Motors Ltd.*, AIR 2000 SC 27: 2000 Cr LJ 174 (SC).
- (xi) So far as the quashing of complaints and inquiry on the basis of FIR registered by the complainant are concerned the High Court was not justified in interfering with the same and quashing the proceeding by an elaborate decision on the merit of matter and in coming to conclusion that section 195 of Cr PC will be a bar it was a premature conclusion. Order quashing the two complaints set aside; *Manohar v. Ashoka*, AIR 2000 SC 202.

- (xii) The extra-ordinary power under section 482 of Code have to be exercised sparingly and should not be resorted to like remedy of appeal or revision; Kavita (Smt.) v. State, 2000 Cr LJ 315 (Del).
- (xiii) In absence of any allegation in complaint that the petitioner was a director on the date when cheque was issued by company or that he was incharge of and was responsible to company, the complaint is liable to be quashed; M. Chockalingam v. Sundaram Finance Service Ltd., 2000 Cr LJ 137 (Mad).
- (xiv) When the provisions under section 37 of N.D.P.S. are applicable and operative with nonobstanate clause, the powers of High Court remains restricted by limitation under section 37 (1)(b) of Act in considering bail application of accused charged for offence under N.D.P.S. Act, then the accused not entitled to grant of interim bail; Islamuddin v. State of Delhi, 2000 Cr LJ 108 (Del.).
- (xv) In absence of any valid ground, the F.I.R. lodged against immigration consultant for violating sections 10, 16 of Emigration Act by issuing advertisement, High Court can not interfere at the stage of F.I.R.; M.D.K. Immigration Consultant, Chandigarh v. Union of India, 2000 Cr LJ 252 (P&H).