

Saving of Inherent Power of High Court (S.482)

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Introduction:



SECTION 482 PROVIDES FOR SAVING OF THE INHERENT POWERS OF HIGH COURT.



SUCH POWERS ARE INTENDED TO BE EXERCISED BY THE HIGH COURT IN ORDER TO OVERCOME THE INHERENT INADEQUACY IN THE PROCEDURAL LAWS I.E., CR.P.C.

Introduction

Powers u/s. 482 can only be exercised in criminal cases only.

Mostly the inherent powers of the High Court are used in order to quash criminal proceedings.

Need for Saving Inherent Powers

- Lacunas are sometimes discovered in procedural laws it is to cover such lacunae and to deal with cases where such lacunae are discovered that the procedural law invariably recognizes the existence of inherent power in Courts.



Scope

- This section does not give the High Court any new set of powers.
- It only provides that those powers which the Court already has shall be preserved.
- Though the powers conferred u/s. 482 are very wide in their scope, however rules of practice provide that such powers shall be exercised in exceptional cases only.
- The High Court shall refrain from interfering in the subordinate Court proceeding when they are at interlocutory stage.



Three Principles in relation to exercise of inherent powers of the High Court

The power shall not be resorted to if there is a *specific provision in the Code* for redress of the particular grievance;

It should be used to *prevent abuse of process* of any Court or *secure ends of justice*;

It should not be exercised as *against the express bar of law* engrafted in any other provision of the Code.

Duty of the High Court while exercising such Power u/s. 482



The Court although has wide discretion under section 482, however such discretion shall be used sparingly and carefully by the Court.



It shall only be resorted to in cases where any of the three principles mentioned above are applicable to the facts of such case.

Power u/s. 482 vis-à-vis article 226 & 227

All the three provisions i.e., Article 226, 227 and Section 482 confer wide discretion on the High Court.

However, if powers u/s. 482 and Article 227 can be resorted to then the Court shall refrain from invoking powers under its writ jurisdiction i.e., Article 226.

Period of Limitation u/s. 482

It is striking to note that due to the very discretionary nature of the powers u/s. 482, there is no period of limitation that has been provided for filing a petition u/s. 482 before the High Court.

The reasonable object behind not having any limitation period is that the power u/s. 482 is saved to secure the ends of justice.

Hence the mere fact that the petition was filed at a belated stage would have no bearing if the case is otherwise sound on merits.

Article 136 vis-à-vis Section 482

The Supreme Court in the case of ***Delhi Judicial Service Assn. V State of Gujrat*** held that the subordinate Courts do not have inherent powers like the High Courts.

However, it further noted that even the Apex Court lacks such a provision, however at the same time it noted that it has its own plenary and residuary power under Article 136 of the Constitution.

Therefore, the Hon'ble Apex Court can set aside or quash a criminal proceeding if a special leave petition is filed before it under Article 136

Cases where Inherent Powers may be exercised

- False allegations in the FIR.
- The allegations do not constitute a cognizable offence.
- Evidence does not disclose commission of any offence.
- Allegations are absurd and inherently improbable.
- Requisite sanction not obtained.
- Express legal bar engrafted, which prohibits continuance of criminal proceedings.
- When a criminal proceeding is manifestly attached with *mala fide*.
- Malicious Prosecution.

Thank You

