

INHERENT POWER OF HIGH COURTS TO  
QUASH CRIMINAL PROCEEDINGS IN  
COMPANY CASES: A STUDY IN THE LIGHT  
OF SUPREME COURT'S DECISION IN  
SUSHIL SURI'S CASE\*

By

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In the recent days, a quite a few cases have occurred where the companies have indulged several times in practices taking the character of serious criminal offences like cheating, forgery and falsification of accounts resulting in loss to the tune of crores of rupees. Even at the very initial stages, when investigation by CBI or police is taken up resulting in filing a charge sheet, the officials of the company who are alleged to have committed the offence with the connivance of chartered accountants and others, move the High Court to quash the proceedings under Sec. 482 of the Criminal Procedure Code.

2. Sec 482 of the Criminal Procedure Code, 1974<sup>1</sup> envisages three circumstances under which the inherent jurisdiction may be exercised by the High Courts namely:-

- (i) To give effect to an order under the Cr. P.C.;
- (ii) To prevent an abuse of the process of Court; and
- (iii) To otherwise secure the ends of justice.

The Supreme Court has laid down the following norms<sup>2</sup> dealing with the exercise of inherent powers:-

- (i) Though the powers of High Court are very wide, they have to be exercised sparingly, carefully and

cautiously *ex debito justitiae* to do real and substantial justice for which the Court exists;

- (ii) ...it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court; broad principles were laid down while exercising jurisdiction under Sec 482 Cr.P.C;
- (iii) ...the exercise of inherent powers would depend on the facts and circumstances of each case, but the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction, where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iv) As already laid down in *R.P. Kapur's Case*,<sup>3</sup> the following categories of cases, the High Court will be justified in exercising the powers under Sec 482 CrPC to quash criminal cases:-
  - (a) Where it manifestly appears that there is a legal bar against the institution or continuation of proceedings, such as want of sanction etc.,
  - (b) Where the allegation in the First Information Report on the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged; and
  - (c) Where the allegation constitutes an offence, but there is no evidence adduced or the

\* *Sushil Suri v. CBI* AIR 2011 SC P. 1713-1722; (2011) 107 SCL June P.391-405

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1. Criminal Procedure Code, 1974 hereinafter referred to as Cr. P.C. throughout this study.

2. Supra, Para 11

3. *K.P. Kapur v. State of Punjab*: AIR 1960 SC P.866.

evidence adduced clearly or manifestly fails to prove the charge;

- (v) The object and purpose of Sec. 482 CrPC has been enunciated by the Supreme Court in *Dinsh Dutt Joshi's Case*<sup>4</sup> as follows:-

"The principle embodied in the section is based upon the maxim quando lex aliquid alicui concedet, concedere videtur et id sine qua res ipsae esse non potest. This maxim means that when the law gives to anyone, it gives all those things without which the thing itself would be unavailable;

- (vi) Sec. 482 CrPC does not confer any new power but only declares that the High Courts possess inherent powers for the purpose specified in the section;
- (vii) As lacunae are sometime found in procedural law, Sec. 482 CrPC has been embodied to such lacunae wherever they are discovered;
- (viii) The use of extra-ordinary powers conferred upon the High Court under Sec. 482 CrPC are however required to be reserved, as far as possible, for extra-ordinary cases;
- (ix) ...that the inherent powers should not be exercised to stifle a legitimate prosecution;
- (x) The High Court should normally refrain from giving a *prima-facie* decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before a Court, and issues involved, whether factual or legal, are of such magnitude

4. *Dinsh Dutt Joshi v. State of Rajasthan*: (2001) 8 SCC P.570

that they cannot be seen in their true perspective without sufficient material;<sup>5</sup>

- (xi) Where the conspiracy alleged is with regard to commission of a serious crime of the nature contemplated in Sec. 120B read with proviso to sub-section (2) of Sec. 120A of IPC, then is that event mere proof of an agreement between the accused for commission of such crime alone is enough to bring about a conviction under Sec. 120B and the proof of any overt act by the accused or by any one of them would not be necessary;<sup>6</sup>
- (xii) The Jurisdiction of the Supreme Court under Art 142 of the Constitution of India, depends on the facts and circumstances of each case. The High Court in exercise of its powers under Sec 482 CrPC and the Supreme Court under Art 142 of the Constitution of India would not direct quashing of a case involving a crime against the society particularly when both the learned special Judges as also the High Court have found that a *prima facie* case has been made out against the appellants herein for framing a charge;<sup>7</sup>
- (xiii) .....merely because the dues of the bank have been paid up, the appellant cannot be exonerated

5. Points IX and X have been laid down in a series of cases. They are *CBI v. A.Ravi Shanker* (2000) 6 SCC P.351 at Para 9; *R.P.Kapur v. State of Punjab*: AIR 1960 SC P.866; *State of Haryana v. Bhajan Lal*: (1992) Suppl 1 SCC P.305; *B.S.Joshi v. State of Haryana*: (2003) 4 SCC P.675 Para 8; *Nikil Merchant v. CBI*: (2008) 9 SCC p.677.

6. This observation was already made in Supreme Court's decision in *Suresh Chandra Balori v. State of Bihar*: (1995) Suppl 1 SCC P.80

7. *Smt. Rumi Dhar v. State of West Bengal*: (2009) 6 SCC P.364.



from the criminal liability and the charge-sheet cannot be quashed;<sup>8</sup> and

- (xiv) ....the compromise arrived at between the company and the bank and also Cl(11) of the consent terms filed in the suit, the Court was satisfied that the case is not a fit case where technicality should not be allowed to stand in the way in quashing criminal proceedings, since the continuation of the proceedings after the compromise arrived at between the parties would be a futile exercise<sup>9</sup>

3. In Sushil Suri's Case, it was found that the company through its directors in concern with Chartered Accountants conceived a criminal conspiracy and executed it, for forging and fabricating a number of documents ... in order to support its claim to avail hire-purchase loan from Punjab & Sindh Bank. Pay orders and Demand Drafts were encashed (in favour of suppliers) by opening six fictitious accounts and a systematic fraud was committed on the Bank. Depreciation on the new machinery, which were never purchased, were claimed on the basis of forged invoices.

4. The facts of the case reveal a very sad state of affairs in the functioning of Banks. How a huge loan of 300 lakhs was advanced without proper scrutiny and inspection by bank officials creates a serious doubt in the mind of the public. Lack of supervision by Banks and releasing money without proper check has led to the commission of series of offences. Money due to bank was paid, though not, as a result of a compromise, acceptance of the repayment may be viewed as an implied compromise. The repayment should have been routed through the Court

and should be conditioned as not to free the individuals from criminal liability. The increase in cases of this type under study is alarming. There is a need to create a separate investigating machinery attached to the Company Law Board to exercise statutory power of control to ensure proper utilization of loan amounts. This statutory machinery should examine the case thoroughly to find out whether there is a '*prima facie*' case to proceed by way of criminal prosecution. The existing law may be amended to provide that the sanction of the Company Law Board is necessary to maintain a prosecution against the company and its officials.

The Company Law Board must issue a certificate that the case is a fit one for filing a case in a criminal court. It is worthwhile to amend the existing law to incorporate a provision to levy a fine (10) times the value of the money defrauded as an effective deterrent and as an alternate to criminal proceedings. Besides the Directors and other officials involved, must be disqualified from being a director or an official of a company either for a limited period or permanently.

5. The Registrar of Companies, besides issuing a certificate of incorporation should have an appropriate wing to ensure proper functioning of companies and to see that no violation of statute or norms relating thereto is violated

The banks before sanctioning loans to companies must invariably inform the Registrar of Companies and the Company Law Board, so that timely action can be taken to prevent fraud or other offences in companies relating to the use of money borrowed and for the timely repayment thereof. Companies indulging in repeated crimes should be de-incorporated and a provision to this effect must be made in the Companies Act.

8. Sushil Suri's Case, Supra Para 23

9. Sushil Suri's case, Supra Para 19. The decisions in Nikhil Merchant's case and B.S. Joshi's case were relied upon.