

(2001) 10 DEL CK 0149

Delhi High Court

Case No: Criminal M. (M.) No's. 2728, 3630, 4107, 4391 and 4736 of 2000 with 1376, 1964, 2096 and 2417 of 2001

Gurcharan Singh Bhawnani

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision: Oct. 12, 2001**Acts Referred:**

- Constitution of India, 1950 - Article 142, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 320, 320(9), 321, 357, 482
- Electricity Act, 1910 - Section 39, 44
- Penal Code, 1860 (IPC) - Section 379

Citation: (2002) CriLJ 744 : (2001) 94 DLT 813 : (2003) 67 DRJ 191 : (2002) 1 RCR(Criminal) 324

Hon'ble Judges: Dr. Arijit Pasayat, C.J; Surinder Kumar Aggarwal, J; Kripa Shankar Gupta, J

Bench: Full Bench

Advocate: Ashok Gurgani, for the Appellant; Anil Soni, Pawan Sharma, Richa Kapoor, O.P. Saxena, M.N. Dudeja, S. Kohli, Sunil Kapoor, Aviash Ahlawat, Ajay Jha and Rashmi Chopra, for the Respondent

Judgement

Arijit Pasayat, C.J.

Noticing that judgments of different Benches--Single and Division -- in effect permitted compounding of offences which are non-compoundable by exercising power u/s 482 of the Code of Criminal Procedure, 1973 (in short, the Code,) reference has been made to the Larger Bench, as the learned Judge before whom the petitions were posted, expressed doubt about permissibility of such a course.

2. Factual aspects need not be noted in detail, as the basic issue involved in all these cases in that proceedings were initiated for alleged commission of offences punishable under Sections 39/44 of the Indian Electricity Act, 1910 (in short the Act) read with Section 379 of the Indian Penal Code, 1860, (in short, IPC) and payer was

for quashing them as theft bill amounts have been paid.

3. Learned Counsel for petitioners submitted that even though there may be bar for compounding of offences in terms of Sub-section (9) of Section 320 of the Code, yet there is no bar for exercise of power u/s 482 of the Code in appropriate cases to either prevent the abuse of the process of the Court or to secure ends of justice. Similar question has been raised before the Courts and the Courts are flooded with litigation of this nature. There is no dispute on the fact that offences in question are not compoundable in view of the specific bar under Sub-section (9) of Section 320.

4. Few decisions of the Apex Court which are of relevance need to be noted. In [R.P. Kapur Vs. The State of Punjab](#), the Apex Court held as follows:

"There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code."

Again in *Palaniappa Gounder v. State of Tamil Nadu*, AIR 1970 SC 1323, the issue was almost similar. The Apex Court held as follows:

"Section 482 of the Code under which the heirs of the deceased filed the application for compensation corresponds to Section 561A of the Criminal Procedure Code, 1898. It saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A provision which saves the inherent powers of a Court cannot override any express provision contained in the Statute which saves that power. This is put in another form by saying that if there is an express provision in a statute governing a particular subject matter there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the Statute which are made advisedly to govern the particular subject matter. From this it will be clear that the application made by the heirs of the deceased for compensation could not have been made u/s 482 since Section 357 expressly confers power on the Court to pass an order for payment of compensation in the circumstances mentioned therein."

5. In [Madhu Limaye Vs. The State of Maharashtra](#), on which great emphasis was laid by learned Counsel for petitioner, under the third exception carved out, it was observed as follows:

"(3) It should not be exercised as against express bar or law engrafted in any other provision of the Code."

In *Simirkhia v. Dolley Mukherjee*, , while considering whether the High Court is empowered to review its own decision under the purported inherent power, the Apex Court held:

"The inherent power u/s 482 is intended to prevent the abuse of the process of the Code and to secure ends of justice. Such power cannot be exercised to do

something which is expressly barred under the Code."

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"If a matter is covered by an express letter of law, the Court cannot give a go-bye to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction."

The Apex Court referred to its earlier decision in [Smt. Sooraj Devi Vs. Pyare Lal and Another](#), where it was observed as follows:

"Now it is well-settled that the inherent power of the Court cannot be exercised for doing that which is specifically prohibited by the Code."

6. In fact, in [Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc.](#), the Apex Court dealing with the issue of prohibition of Section 320(9) of the Code, held that "the order terminating the pending criminal proceedings is not supportable on the strict terms of Sections 320 or 321 or 482 of the Code". But the direction by the Court given earlier was held to be in order in view of Article 142 of the Constitution of India, 1950 (in short, the Constitution).

7. In Dharampal v. Ramshri, I (1993) CCR 47 (SC) = AIR 1993 SC 1651, the Apex Court again reiterated its view and observed:

"It is now well-settled that the inherent powers u/s 482 of the Code cannot be utilised for exercising power which are expressly barred by the Code."

8. In a very recent case, the Apex Court held as follows:

"Section 482 of the Criminal Procedure Code starts with the words "Notwithstanding anything contained in the Code". Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar."

(See. [Satya Narayan Sharma Vs. State of Rajasthan](#),

9. The legislative mandate enshrined in Section 320(9) of the Code is manifestly clear. It is couched in a mandatory form. This Court in exercise of the jurisdiction u/s 482 of the code cannot add, vary or amend a statutory provision. Section 320 of the Code which deals with compounding of offences is exhaustive in its nature and only those offences can be compounded in accordance with the provisions of said provision can be so done and not in any other manner. That being the position, we are of the considered view that offences which are not compoundable under Sub-section (9) of Section 320 cannot be dealt with u/s 482 of the Code.

It is needless to observe that what is not permissible u/s 482, Cr.P.C. cannot be achieved by resorting to Article 226 of the Constitution. The principles governing quashing of criminal proceedings are well settled by the Supreme Court. Quashing of the FIRs and proceedings thereon is permissible in terms of principles laid down in [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), and several subsequent judgments. References are accordingly answered. The matters shall be placed before Single Judge for disposal.

Reference answered accordingly.