

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-42234 of 2014 (O&M)
Date of Decision: 19.10.2015**

M/s Janta Land Promoters Ltd and another

.....Petitioners

Vs.

Deputy Commissioner of Income Tax, Chandigarh

.....Respondent

2. CRM-M-42235 of 2014(O&M)

Paramjit Singh

.....Petitioner

Vs.

Deputy Commissioner of Income Tax, Chandigarh

.....Respondent

3. CRM-M-42236 of 2014(O&M)

M/s Janta Land Promoters Ltd and another

.....Petitioners

Vs.

Deputy Commissioner of Income Tax, Chandigarh

.....Respondent

4. CRM-M-42237 of 2014(O&M)

Kulwant Singh

.....Petitioner

Vs.

Deputy Commissioner of Income Tax, Chandigarh

.....Respondent

5. CRM-M-42250 of 2014(O&M)

Manjit Kaur

.....Petitioner

Vs.

Deputy Commissioner of Income Tax, Chandigarh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate
for the petitioners.

Mr. Rajesh Sethi, Advocate and
Ms. Pridhi Jaswinder Sandhu, Advocate
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

These five identical petitions bearing CRM-M-42234 to 42237 and CRM-M-42250 of 2014 are being decided together vide this common order, as all these petitions are against the same respondent and based on similar set of facts. However, for the facility of reference, facts are being culled out from CRM-M-42234 of 2014.

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek quashing of the identical complaints filed by the respondent under the Provisions of Income Tax Act, 1961 and the identical impugned summoning orders alongwith consequential proceedings arising

therefrom.

Notice of motion was issued.

At the very outset, learned counsel for the respondent raised a preliminary objection about maintainability of these petitions. He submits that it is a matter of record that petitioners have not availed their equally efficacious alternative remedy of revision before the learned Sessions Judge. He further submits that when the remedy of revision is very much provided under the Cr.P.C. itself, petitioners ought to have availed their alternative remedy, at the first instance, instead of filing these petitions. He seeks dismissal of these petitions.

Having been confronted with the abovesaid undisputed fact situation, learned senior counsel for the petitioners tried to justify filing of these petitions without availing the remedy of revision against the impugned summoning order, at the first instance. On the issue of maintainability of these petitions, learned senior counsel for the petitioners submits that petitioners are entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C, because of the peculiar fact situation obtaining in these cases. In support of his contentions, learned senior counsel places reliance on a judgment of the Hon'ble Supreme Court in Dhariwal Tobacco Products Ltd and others Vs. State of Maharashtra and another 2009 (2) SCC 370. He also submits that preliminary objection raised by learned counsel for the respondent is liable to be over-ruled and all these petitions deserve to be allowed.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the cases and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that petitioners are liable to be relegated to their equally efficacious alternative remedy of revision against the impugned summoning order, at the first instance, which has been provided under the Cr.P.C. itself. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that remedy of revision against the impugned summoning orders is provided under the Cr.P.C. It is also not in dispute that petitioners have not availed their equally efficacious alternative remedy of revision. Under these circumstances, the important question of law that arises for consideration of this Court is, whether one should be permitted to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C., without availing his equally efficacious alternative remedy of revision against the impugned summoning order, at the first instance.

After giving anxious consideration to the issue and going through the long catena of judgments of the Hon'ble Supreme Court as well as different High Courts of the country, including this Court, this Court is of the view that answer to the question posed hereinabove is and has to be an emphatic no. It is so said because, as a general rule, a litigant cannot be permitted to bypass the equally efficacious alternative remedy of revision provided under the Cr.P.C. itself against the impugned summoning order, particularly when no

justified reason is forthcoming which may entitle the petitioners to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C.

Although it is not an absolute rule in every given situation that a petition under Section 482 Cr.P.C. for quashing of a complaint and summoning order cannot be entertained under any circumstances, in case of availability of the alternative remedy, yet it is equally true that exceptions apart. The inherent jurisdiction of this Court under Section 482 Cr.P.C., for quashing of complaint and the summoning order without availing equally efficacious alternative remedy of revision, at the first instance, cannot be thrown open, as a general practice, in spite of the fact that jurisdiction of the revisional court as well as this Court are parallel. This is the reason that despite availability of parallel remedy before the learned court of Sessions as well as this Court, for seeking pre-arrest bail under Section 438 Cr.P.C, it is being insisted by all the High Courts of the country that one must avail his remedy of pre-arrest bail before the learned Court of Sessions, at the first instance, until and unless there is an exceptional case and compelling circumstances. There is no reason, whatsoever, why the same principle based on the same analogy be not applied regarding inherent jurisdiction of this Court under Section 482 Cr.P.C.

Although this Court had repeatedly held, including in a very recent order dated 10.9.2015 passed in CRM-M-34559 of 2013 (Mrs. Dipali Mittal and others Vs. Sicom Limited) that petition under

Section 482 Cr.P.C, like the petitions in hand, would not be maintainable, yet since this issue is coming up before this Court frequently, it is thought appropriate to render a more comprehensive order, referring to the cases on the subject more elaborately.

In fact, the issue is no more *res integra*. It had been set at rest by the Hon'ble Supreme Court as well as different High Courts including this Court and even under the provisions of old Cr.P.C., as well as Cr.P.C. of 1973. The Hon'ble Supreme Court as well as different High Courts of the country have not permitted any litigant, as a general rule, to invoke the provisions of Section 482 Cr.P.C., when the alternative remedy is provided under the Cr.P.C. itself. The relevant judgments on the subject are as under:-

1. Khushi Ram Vs. Hashim and others, AIR 1959 SC 542. (SC)
2. Madhu Limaye Vs. State of Maharashtra, 1977 (4) SCC 551 (SC)
3. Arun Shankar Vs. State of Uttar Pradesh 1999 (6) SCC 146 (SC)
4. State through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and others, 2003 (6) SCC 641 (SC)
5. Adalat Prasad Vs. Rooplal Jindal, 2004 (7) SCC 338 (SC)
6. Hamida Vs. Rashid @ Rasheed and others, 2008 (1) SCC 474 (SC)
7. Som Mittal Vs. Government of Karnataka 2008 (3) SCC 574 (SC)
8. Krishna Kumar Variar Vs. Share Shoppe 2010 (12) SCC 485
9. Padal Venkata Rama Reddy @ Ramu Vs. Koyyuri

Satyanarayana Reddy and others, 2011 (12) SCC 437 (SC)

10. State of Punjab Vs. Davinder Pal Singh Bhullar and others, 2011 (14) SCC 770 (SC)

11. Mohit alias Sonu and another Vs. State of U.P. And another, 2013 (7) SCC 789 (SC)

12. Bachan Singh V. Harpreet Kaur 1996 (1) R.C.R. (Criminal) 806 (Punjab & Haryana High Court)

13. Amarjeet Singh V. State of Punjab 1997 (3) R.C.R. (Criminal) 204 (Punjab & Haryana High Court)

14. Mukhtiar Singh V. State of Punjab 1997 (3) R.C.R. (Criminal) 14 (Punjab & Haryana High Court)

15. M/s Golden Forests (I) Ltd. V. Registrar of Companies 1999 (1) R.C.R. (Criminal) 758 (Punjab & Haryana High Court)

16. Balbir Singh Vs. Gurdial Singh 2002 (1) RCR (criminal) 518 (Punjab & Haryana High Court)

17. Jaswant Singh Vs. State of Haryana and others, 2002 (3) RCR (criminal) 647 (Punjab & Haryana High Court)

18. Krishan V. State of Haryana 2002 (2) R.C.R. (criminal) 23 (Punjab & Haryana High Court)

19. Palwinder Raj Singh Vs. State of Punjab 2003 (1) RCR (criminal) 198 (Punjab & Haryana High Court)

20. Rajinder Arora alias Raju V. State of Punjab & Another 2011 (1) R.C.R. (Criminal) 462 (Punjab & Haryana High Court)

21. Sudhir Gowda V. State of Haryana & Anr. (CRM-M-9542 of 2014) (Punjab & Haryana High Court)

22. Joginderpal Bedi Vs. State of Punjab and others, 2014 (1) RCR (criminal) 937 (Punjab & Haryana High Court)

23. Madhu Bala & Others V. State of Haryana 2015 (3) R.C.R. (Criminal) 881(Punjab & Haryana High Court)

24. Rajinder Singh V. State of Haryana 2015 (1) Law Herald 601 (Punjab & Haryana High Court)

25. Mrs. Dipali Mittal and others Vs. Sicom Limited (CRM-M-34559 of 2013 decided on 10.9.2015) (Punjab & Haryana High Court)
26. Shagufta Shamas Vs CBI, 2008 (4) JCC 2339 (Delhi High Court)
27. Meena Singh and others Vs. Sunita Bhatia, 2014 (211) DLT 650 (Delhi High Court)
28. Mahender Vs. State and another, 2014 (3) JCC 1589 (Delhi High Court)
29. Ankur Mutreja Vs. Delhi Police, 2014 (9) RCR (criminal) 1913 (Delhi High Court)
30. Shika Makkar and another Vs. State (Govt. of NCT of Delhi) and another (Crl. M.A. Nos. 3535-26 of 2015 decided on 10.3.2015) (Delhi High Court)
31. Madhurima Chandra and others Vs. M/s Ansun Electronics Pvt. Ltd and another, 2015 (1) NIJ 704 (Delhi High Court)
32. Aman Kumar Harjai Vs. State and another, 2015 (4) AD (Delhi) 506 (Delhi High Court)
33. Bal Ram Vs. Bses Rajdhani Power Ltd and another, 2015 (3) JCC 1695 (Delhi High Court)
34. Bharat S. Dahanukar Vs. State of Maharashtra, 2007 ALL MR (Cri) 1620 (Bombay High Court)
35. Floyd D. Aguiar Vs. Bronwyn D. Aguiar and another, 2007 (2) Crimes 69 (Bombay High Court)
36. Yashwant and others Vs. State of Maharashtra and another, 2014 ALL MLR (Cri) 998 (Bombay High Court)
37. Shri. Sanjay P. Singh and another Vs. Shri Bhanu Prakash Singh and others, 2014 ALL MR (Crl.) 672 (Bombay High Court)
38. Balabhadra Dash and Anr. Vs. State of Orissa and others, 1991 CriLJ 2457 (Orrisa High Court).
39. Harsh Kapoor and others Vs. Komal Kapoor, 2013 (2) U.D. 349 (Uttarakhand High Court).

40. K.R. Ramkumar Vs. State rep. By Inspector of Police, Kumbakonam 2004 (2) RCR (crm) 287 (Madras High Court).

41. A. Muthulakshmi Vs. Inspector, North Police Station, 2007 (1) MadWN (Cri) 293 (Madras High Court).

42. Mohan Lal and another Vs. State 1974 CriLJ 1407 (Allahabad High Court)

43. Avadh Narain Lal Vs. State of U.P. And another 1986 CriLJ 1233 (Allahabad High Court)

44. Sushil Aggarwal Vs. State of U.P. And another, 2015 (3) All.LJ 19 (Allahabad High Court)

45. (Sayed) Mehrab Ali Vs. Shahid Ali and another, 1992 (2) DMC 83 (Rajasthan High Court)

46. Sanjay Bhandari etc. Vs. State of Rajasthan, 2010 (6) RCR (criminal) 2635 (Rajasthan High Court)

47. Tanneru Ram Babu Vs. State of A.P., 2012 (7) RCR (criminal) 138, (Andhra Pradesh High Court)

48. Dipak Kumar Chatterjee Vs. Smt. Leena Chatterjee, 1994 (2) CCR 1339 (Calcutta High Court)

49. Deepak Kumar Singh @ Munna and another Vs. State of West Bengal and another, 2007 (3) AICLR 114 (Calcutta High Court)

50. Jagdish Pandey Vs. State of Bihar and others, 2001 CriLJ 3814 (Jharkhand High Court).

51. Madhusudan Paul Vs. State of Jharkhand, 2001 (3) RCR (Cri) 611, (Jharkhand High Court)

To be fair to the learned senior counsel for the petitioners, following are the judgments wherein a slightly different view has been taken but the cardinal principle of law has not been deviated:-

1. Raj Kapoor and others Vs. State (Delhi Administration) and others, AIR 1980 SC 258 (SC)

2. M/s Zandu Pharmaceutical Works Ltd. Vs. Md. Sharaful Haque, 2005 (1) SCC 122 (SC)

3. Dhariwal Tobacco Products Ltd and others Vs. State of Maharashtra and another 2009 (2) SCC 370 (SC)
4. Punjab State Warehousing Corporation Faridkot Vs. M/s Sh.Durga Ji Traders and others, 2011 (14) SCC 615 (SC)
5. Devendra Dutt and others Vs. State and others, 1990 (1) RCR (criminal) 50 (Delhi High Court).
6. Smt. Kavita Vs. State and others 2000 CriLJ 315 (Delhi High Court)
7. Vishwanath Ramkrishna Patil and another Vs. Ashok Murlidhar Sonar and another, 2006 (3) ALL MR (Cri) 2601 (Bombay High Court)
8. Satish Soma Bhole Vs. Dr. Pravin Chandrabhan Wagh and another 2009 ALL MR (Cri) 1064 (Bombay High Court)
9. Divyaram Vs. State of Chhattisgarh and others, 2011 (8) RCR (criminal) 1353 (Chattisgarh High Court)

The Hon'ble Supreme Court, after discussing the entire case law on the subject, in para Nos. 31 to 33 of its judgment in **Davinder Pal Singh Bhullar's case** (supra), referring to the long catena of earlier judgments, held as under:-

IV. INHERENT POWERS UNDER SECTION 482 Cr.P.C.

*31. The inherent power under Section 482 Cr.P.C. is intended to prevent the abuse of the process of the Court and to secure the ends of justice. Such power cannot be exercised to do something which is expressly barred under the Cr.P.C. If any consideration of the facts by way of review is not permissible under the Cr.P.C. and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter and record a conflicting decision. **If there had been change in the circumstances of the case, it would be in***

*order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there are no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362 Cr.P.C. (See: **Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee & Anr**, (1990) 2 SCC 437).*

*32. The inherent power of the court under Section 482 Cr.P.C. is saved only where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court, amounts to abuse of the process of court. Therefore, such powers can be exercised by the High Court in relation to a matter pending before a criminal court or where a power is exercised by the court under the Cr.P.C. Inherent powers cannot be exercised assuming that the statute conferred an unfettered and arbitrary jurisdiction, nor can the High Court act at its whim or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases (Vide: **Kurukshetra University & Anr. v. State of Haryana & Anr.**, AIR 1977 SC 2229; and **State of W.B. & Ors. v. Sujit Kumar Rana**, (2004) 4 SCC 129).*

33. The power under Section 482 Cr.P.C. cannot be resorted to if there is a specific provision in the Cr.P.C. for the redressal of the grievance of the aggrieved party or where alternative remedy is

*available. Such powers cannot be exercised as against the express bar of the law and engrafted in any other provision of the Cr.P.C. Such powers can be exercised to secure the ends of justice and to prevent the abuse of the process of court. However, such expressions do not confer unlimited/unfettered jurisdiction on the High Court as the “ends of Justice” and “abuse of the process of the court” have to be dealt with in accordance with law including the procedural law and not otherwise. Such powers can be exercised ex debito justitiae to do real and substantial justice as the courts have been conferred such inherent jurisdiction, in absence of any express provision, as inherent in their constitution, or such powers as are necessary to do the right and to undo a wrong in course of administration of justice as provided in the legal maxim “quando lex aliquid aliq, concedit, concediture et id sine quo res ipsa esse non potest”. However, the High Court has not been given nor does it possess any inherent power to make any order, which in the opinion of the court, could be in the interest of justice as the statutory provision is not intended to bypass the procedure prescribed. (Vide: **Lalit Mohan Mondal & Ors. v. Benoyendra Nath Chatterjee, AIR 1982 SC 785 Rameshchandra Nandlal Parikh v. State of Gujarat & Anr. 2006 (1) R.C.R. (criminal) 675 : 2006 (1) Apex Criminal 224 : AIR 2006 SC 915 ; Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS & Anr., 2006 (3) Apex Criminal 65 : AIR 2006 SC 2872 Inder Mohan Goswami & Anr. v. State of Uttranchal & Ors., 2007 (4) R.C.R.***

(Criminal) 548 : 2007 (5) R.A.J. 451 : AIR 2008 SC 251 and Pankaj Kumar vs. State of Maharashtra & Ors., 2008 (4) R.C.R. (Criminal) 890 : 2008 (6) R.A.J. 293).

Similar view was taken by the Hon'ble Supreme Court in its later judgment in **Mohit's case** (supra). The relevant observations made by the Hon'ble Supreme Court in para 22 to 27 of the judgment, which aptly apply in these cases, read as under:-

“In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of Cr.P.C. and not by invoking inherent jurisdiction of the High Court under Section 482 of Cr.P.C. Maybe, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 of Cr.P.C. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of Cr.P.C., the High Court before passing the order would have given notice and opportunity of hearing to the appellants.

So far as the inherent power of the High Court as contained in Section 482 of Cr.P.C. is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided

in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.

Courts possess inherent power in other statute also like the Code of Civil Procedure (C.P.C.) Section 151 whereof deals with such power. Section 151 of C.P.C. reads:-

“Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.”

*This Court in the case of **Padam Sen & Anr. v. State of Uttar Pradesh**, AIR 1961 SC 218 regarding inherent power of the Court under Section 151 C.P.C. observed:-*

“The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore, it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict what has been expressly provided in the Code or against the intentions of the Legislation. It is also well recognised that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.”

*In a Constitution Bench decision rendered in the case of **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal**, AIR 1962 SC 527, this Court*

held that :-

“The inherent jurisdiction of the Court to make orders ex debito justitiae is undoubtedly affirmed by S.151 of the Code but inherent jurisdiction cannot be exercised so as to nullify the provision of the Code of Civil Procedure. Where the Code of Civil Procedure deals expressly with a particular matter, the provision should normally be regarded as exhaustive.”

27. The intention of the Legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis-à-vis the law laid down by this Court it can safely be concluded that when there is a specific remedy provided by way of appeal or revision the inherent power under Section 482 Cr.P.C. or Section 151 C.P.C. cannot and should not be resorted to.”

So far as the judgment of the Hon'ble Supreme Court in Dhariwal Tobacco's case (supra), relied upon by the learned senior counsel for the petitioners is concerned, there is no dispute about the law laid down therein. However, on a careful perusal of the cited judgment, the same has not been found to be of any help to the petitioners, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law

thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

After referring to the abovesaid case law, this Court in the case of **Dipali Mittal** (supra) held as under:-

No doubt, there could not be and should not be any straight jacket formula in this regard. In a given case, if this Court comes to the conclusion, on the basis of peculiar fact situation of the case that it is just and expedient with a view to prevent abuse of process of law or to secure the ends of justice, as warranted in a particular case, there would be no absolute bar to entertain a petition under Section 482 Cr.P.C., while invoking its inherent jurisdiction, in spite of availability of alternative remedy.

However, it is equally true that while invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C., petitioners would be under obligation to make out an exceptional case, enabling this Court to exercise its discretion under Section 482 Cr.P.C. There is no dispute that powers of this Court under Section 482 Cr.P.C. are wide enough, yet it is also a settled principle of law that such powers are to be exercised sparingly and with

circumspection, with a view to achieve the objects envisaged under Section 482 Cr.P.C, itself.

Reverting back to the facts and circumstances of the cases in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as different High Courts including this Court, in the cases referred to hereinabove, this Court feels no hesitation to conclude that since the petitioners have failed to make out these cases as exceptional cases, for entertaining these petitions, this Court would be exceeding its jurisdiction, while exercising its powers under Section 482 Cr.P.C. Petitioners also could not give any reason, much less cogent reasons, as to why they could not avail the equally efficacious alternative remedy of revision against the impugned summoning order, at the first instance.

No other argument was raised.

Considering the peculiar facts and circumstances of these cases, coupled with the reasons aforementioned, all these petitions have not been found to be maintainable. Thus, these must fail primarily on the issue of maintainability itself.

Consequently, these petitions are dismissed as not maintainable. Petitioners are relegated to their equally efficacious alternative remedy by way of criminal revision against the impugned summoning order, at the first instance. As this Court has not gone into the merits of the cases, the observations made hereinabove will not influence the learned revisional courts, while deciding the case(s) on merits, so as to avoid any prejudice to the rights of either of the

parties.

It is also clarified that if the appropriate revision petitions(s) will be filed by the petitioners against the impugned summoning orders within a period of one month from the date of receipt of certified copy of this order, respondent shall not raise the issue of limitation against the petitioners herein.

Resultantly, with the abovesaid observations made and directions issued, all these petitions stand disposed of, however, no cost.

**(RAMESHWAR SINGH MALIK)
JUDGE**

19.10.2015
Ak Sharma