

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.9 of 2016

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1. The Bihar State Of Electricity Board Now South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna through its Chairman now Managing Director.

2. The Assistant Electrical Engineer, Electric Supply Sub-Division, Now Capital Division, Patna.

.... Petitioner/s

Versus

1. Amitabh Sinha son of Shri Akhauri Harshvardhan Sinha, Managing Director, M/S Harsh Advance Diagnostic and Research Pvt. Ltd Basement, Kumar Tower, Boring Road, Patna.

2. The State of Bihar through its Senior Superintendent of Police, Patna.

3. The Office in charge, Budha Colony Police Station, Distt-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Vijay Kumar Verma, Advocate

For the Respondent/s : Mr. Kumari Amrita (GP-10)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

6 10-01-2017 After an interval of so many years of disposal of Cr.WJC No.37/2012 vide order dated 19.07.2012 for which no appeal was preferred, instant petition has been filed to review the order dated 19.07.2012 on the plea that the Division Bench decision of this Court reported in *Mosmat Swaran v. State of Bihar* as reported in **2012(2) PLJR 229** has not been considered which is also based upon **2012(2) SCC 108 (Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) & Anr. V. Sri Sitaram Rice Mill)** which also happens to be sheet-anchor of the order impugned.

2. At the time of hearing on the point of admission



when a query was made with regard to maintainability of the instant petition, learned counsel for the petitioner has submitted that the power so invoked by this Court while disposing of the Cr.W.J.C. was under article 226 of the Constitution and so, be categorized under different nomenclature is not going to cloud the power vested under Article 226 of the Constitution and that being so, review is permissible in terms of Section 114 as well as Order XLVII of the CPC, though not specifically embedded under constitution itself. Accordingly, instant review petition is permissible. To substantiate the same, learned counsel for the petitioner also relied upon *AIR 1963 SC 1909 (Shivdeo Singh & Ors v. State of Punjab & Ors)*, *AIR 1988 SC 1351 (Collector of Customs, Bombay, Appellant v. Bhor Industries Ltd., Respondent.)*.

3. The Court has to function as per assigned roster entrusted by Hon'ble the Chief Justice, having primacy over the same. Nomenclature of the petition is accordingly identified as well as categorized. So far Patna High Court is concerned, the writ petition is bifurcated in two parts, CWJC as well as CrWJC in terms categorization under Patna High Court Rules, Chapter XXI-C(3) which speaks as follows:-

“Application under Article 226 of the Constitution



shall be registered as Civil Jurisdiction Cases (CWJC) or Criminal Writ Jurisdiction Case (CrWJC) as the case may be.”

4. Whenever prayer is influenced with the fragrance of criminal cause, then the matter has to be seen in exercise of power having entrusted in terms thereof. Criminal court has no power to recall its own order as per Section 362 Cr.P.C. Irrespective of hierarchy of the Courts.

5. In *State of Punjab v. Davinder Pal Singh Bhullar & Ors etc with Sumedh Singh Saini v. Davinder Pal Singh Bhullar & Ors* as reported in *AIR 2012 SC 364*, it has been held as under:-

26. There is no power of review with the Criminal Court after judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. [Section 362](#) Cr.P.C. is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (See: [Hari Singh Mann v. Harbhajan Singh Bajwa & Ors.](#), AIR 2001 SC 43; and [Chhanni v. State of U.P.](#), AIR 2006 SC 3051).

Moreover, the prohibition contained



in [Section 362](#) Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under [Section 482](#) Cr.P.C. has no authority or jurisdiction to alter/review the same. (See: [Moti Lal v. State of M.P.](#), AIR 1994 SC 1544; Hari Singh Mann (supra); and State of Kerala v. M.M. Manikantan Nair, AIR 2001 SC 2145).

27. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of [Section 362](#) Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. (Vide: [Chitawan & Ors. v. Mahboob Ilahi](#), 1970 CrL.J. 378; [Deepak Thanwardas Balwani v. State of Maharashtra & Anr.](#), 1985 CrL.J.23; [Habu v. State of Rajasthan](#), AIR 1987 Raj. 83 (F.B.); [Swarth Mahto & Anr. v. Dharmdeo Narain Singh](#), AIR 1972 SC 1300; [Makkapati Nagaswara Sastri v. S.S. Satyanarayan](#), AIR 1981 SC 1156; [Asit Kumar Kar v. State of West Bengal & Ors.](#), (2009) 2 SCC 703; and [Vishnu Agarwal v. State of U.P. & Anr.](#), AIR 2011 SC 1232).

28. This Court by virtue of [Article 137](#) of the Constitution has been invested with an express power to review any judgment in Criminal Law and while no such power has been conferred on the High Court, inherent power of the court cannot be exercised for doing that which is specifically prohibited by [the Code](#) itself. (Vide: State Represented by D.S.P., S.B.C.I.D., Chennai v. K.V. Rajendran & Ors., AIR 2009 SC 46).



29. [In Smt. Sooraj Devi v. Pyare Lal & Anr.](#), AIR 1981 SC 736, this Court held that the prohibition in [Section 362](#) Cr.P.C. against the Court altering or reviewing its judgment, is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by [the Code](#) or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in [Section 362](#) Cr.P.C. and, therefore, the attempt to invoke that power can be of no avail.

30. Thus, the law on the issue can be summarised to the effect that the criminal justice delivery system does not clothe the court to add or delete any words, except to correct the clerical or arithmetical error as specifically been provided under the statute itself after pronouncement of the judgment as the Judge becomes functus officio. Any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law.

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, conceditur 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 by-pass the procedure prescribed. (Vide: [Lalit Mohan Mondal & Ors. v. Benoyendra Nath Chatterjee](#), AIR 1982 SC 785; [Rameshchandra Nandlal Parikh v. State of Gujarat & Anr.](#), AIR 2006 SC 915; [Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS & Anr.](#), AIR 2006 SC 2872; [Inder Mohan Goswami & Anr. v. State of Uttaranchal & Ors.](#), AIR 2008 SC 251; and [Pankaj Kumar v. State of Maharashtra & Ors.](#), AIR 2008 SC 3077).

34. The High Court can always issue appropriate direction in exercise of its power under [Article 226](#) of the Constitution at the behest of an aggrieved person, if the court is convinced that the power of investigation has been exercised by an Investigating Officer malafide or the matter is not investigated at all. Even in such a case, the High Court cannot direct the police as to how the investigation is to be conducted but can insist only for the observance of process as provided for in the [Cr.P.C.](#) Another remedy available to such an aggrieved person may be to file a complaint under [Section 200](#) Cr.P.C. and the court concerned will proceed as provided in Chapter XV of the [Cr.P.C.](#) (See: [Gangadhar Janardan Mhatre v. State of Maharashtra & Ors.](#), (2004) 7 SCC 768; and [Divine Retreat Centre v. State of Kerala & Ors.](#), AIR 2008 SC 1614).

35. The provisions of [Section 482](#) Cr.P.C. closely resemble Section 151 of Code of Civil Procedure, 1908, (hereinafter called the 'CPC'), and, therefore, the restrictions which are there to use the inherent powers under Section 151 CPC are applicable in exercise of powers under [Section](#)



[482](#)Cr.P.C. and one such restriction is that there exists no other provision of law by which the party aggrieved could have sought relief. (Vide: [The Janata Dal v. H.S. Chowdhary & Ors.](#), AIR 1993 SC 892).

36. [In Divisional Forest Officer & Anr. v. G.V. Sudhakar Rao & Ors.](#), AIR 1986 SC 328, this Court held that High Court was not competent under [Section 482](#) Cr.P.C. to stay the operation of an order of confiscation under Section 44(IIA) of the Andhra Pradesh Forest Act as it is distinct from a trial before a court for the commission of an offence.

37. [In Popular Muthiah v. State](#) represented by Inspector of Police, (2006) 7 SCC 296, explaining the scope of [Section 482](#) Cr.P.C., this Court held :

"The High Court cannot issue directions to investigate the case from a particular angle or by a particular agency." (Emphasis added)

Thus, in case, the High Court in exercise of its inherent powers, issues directions contravening the statutory provisions laying down the procedure of investigation, it would be unwarranted in law.

38. [In Rajan Kumar Machananda v. State of Karnataka](#), 1990 (supp.) SCC 132, this Court examined a case as to whether the bar under [Section 397\(3\)](#) Cr.P.C. can be circumvented by invoking inherent jurisdiction under [Section 482](#) Cr.P.C. by the High Court. The Court came to the conclusion that if such a course was permissible it would be possible that every application facing the bar of [Section 397\(3\)](#) Cr.P.C. would be labelled as one under [Section 482](#) Cr.P.C. Thus, the statutory bar cannot be circumvented.

39. This Court has consistently emphasised that judges must enforce laws whatever they may be and decide the cases strictly in accordance with the law. "The laws are not always just and the lights are not always luminous. Nor, again, are judicial methods always adequate to secure justice". But the courts "are bound by [the Penal Code](#) and [Criminal](#)



[Procedure Code](#)" by the very 'oath' of the office. (See: [Joseph Peter v. State of Goa, Daman and Diu](#), AIR 1977 SC 1812).

40. It is evident from the above that inherent powers can be exercised only to prevent the abuse of the process of the court and to secure the ends of justice. However, powers can be used provided there is no prohibition for passing such an order under the provisions of [Cr.P.C.](#) and there is no provision under which the party can seek redressal of its grievance. Under the garb of exercising inherent powers, the Criminal Court cannot review its judgment. Such powers are analogous to the provisions of Section 151 CPC and can be exercised only to do real and substantial justice. The rule of inherent powers has its source in the maxim "Quaeritur aliquid alicui conceditur, concedere videtur id sine quo ipsa, esse non potest" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist. The order cannot be passed by-passing the procedure prescribed by law. The court in exercise of its power under [Section 482 Cr.P.C.](#) cannot direct a particular agency to investigate the matter or to investigate a case from a particular angle or by a procedure not prescribed in [Cr.P.C.](#) Such powers should be exercised very sparingly to prevent abuse of process of any court. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

To inhere means that it forms a necessary part and belongs as an attribute in the nature of things. The High Court under [Section 482 Cr.P.C.](#) is crowned with a statutory power to exercise control over the administration of justice in criminal proceedings within its territorial jurisdiction. This is to ensure that proceedings undertaken under the [Cr.P.C.](#) are executed to secure the ends of justice. For this, the Legislature has empowered the High Court with an inherent authority which is repository under the Statute. The Legislature therefore clearly intended the existence of such



power in the High Court to control proceedings initiated under the [Cr.P.C.](#) Conferment of such inherent power might be necessary to prevent the miscarriage of justice and to prevent any form of injustice. However, it is to be understood that it is neither divine nor limitless. It is not to generate unnecessary indulgence. The power is to protect the system of justice from being polluted during the administration of justice under [the Code](#). The High Court can intervene where it finds the abuse of the process of any court which means, that wherever an attempt to secure something by abusing the process is located, the same can be rectified by invoking such power. There has to be a nexus and a direct co-relation to any existing proceeding, not foreclosed by any other form under [the Code](#), to the subject matter for which such power is to be exercised.

Application under [Section 482](#) Cr.P.C. lies before the High Court against an order passed by the court subordinate to it in a pending case/proceedings. Generally, such powers are used for quashing criminal proceedings in appropriate cases. Such an application does not lie to initiate criminal proceedings or set the criminal law in motion. Inherent jurisdiction can be exercised if the order of the Subordinate Court results in the abuse of the "process" of the court and/or calls for interference to secure the ends of justice. The use of word 'process' implies that the proceedings are pending before the Subordinate Court. When reference is made to the phrase "to secure the ends of justice", it is in fact in relation to the order passed by the Subordinate Court and it cannot be understood in a general connotation of the phrase. More so, while entertaining such application the proceedings should be pending in the Subordinate Court. In case it attained finality, the inherent powers cannot be exercised. Party aggrieved may approach the appellate/revisional forum. Inherent jurisdiction can be exercised if injustice done to a party, e.g., a clear mandatory provision of law is overlooked or where different accused in the same case are being treated differently by the Subordinate



Court.

An inherent power is not an omnibus for opening a pandorabox, that too for issues that are foreign to the main context. The invoking of the power has to be for a purpose that is connected to a proceeding and not for sprouting an altogether new issue. A power cannot exceed its own authority beyond its own creation. It is not that a person is remediless. On the contrary, the constitutional remedy of writs are available. Here, the High Court enjoys wide powers of prerogative writs as compared to that under [Section 482](#) Cr.P.C. To secure the corpus of an individual, remedy by way of habeas corpus is available. For that the High Court should not resort to inherent powers under [Section 482](#) Cr.P.C. as the Legislature has conferred separate powers for the same. Needless to mention that [Section 97](#) Cr.P.C. empowers Magistrates to order the search of a person wrongfully confined. It is something different that the same court exercising authority can, in relation to the same subject matter, invoke its writ jurisdiction as well. Nevertheless, the inherent powers are not to provide universal remedies. The power cannot be and should not be used to belittle its own existence. One cannot concede anarchy to an inherent power for that was never the wisdom of the Legislature. To confer un-briddled inherent power would itself be trenching upon the authority of the Legislature.

6. The aforesaid view has also been considered by the Hon'ble Apex Court in the case of *Sunil Kumar v. State of Haryana* as reported in *AIR 2012 SC 1754*

7. The citation at the end of petitioner did not distinguish the exercise of power having been while commanding



criminal as well as civil sphere independently, separately and so, the applicability of CPC would not be seen and conceived applicable as provided under Section 114 of the CPC read with Order XLVII CPC while exercising criminal jurisdiction under Article 226 of the Constitution of India.

8. That being so, the instant review petition is found non maintainable and is, accordingly, rejected at the present stage itself.

(Aditya Kumar Trivedi, J)

Patna High Court
10th January 2017
Perwez/AFR

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