
(2019) 05 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 20457 Of 2019(O&M)

Raj Rani And Others

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 97, 482

Code Of Civil Procedure, 1908 — Section 151

Constitution Of India, 1950 — Article 32, 32(2), 226

Citation : (2019) 05 P&H CK 0028

Hon'ble Judges : Rajbir Sehrawat, J

Bench : Single Bench

Advocate : Ashok Bhardwaj

Final Decision : Dismissed

Judgement

Rajbir Sehrawat, J

Prayer in the present petition is for protection of life, liberty and property of the petitioner, at the hands of private respondent No.4 and his companions.

The facts as detailed in the petition are that petitioner No.1 is the widow of son of respondent No.4 and petitioner No.2 is his grandson. It is pleaded by them that they are the owners in possession of house No.33, J.P.Nagar, Patiala Gate, Sangrur. This house was owned by the deceased-husband of petitioner No.1. But after the death of the husband of petitioner No.1 the said house had come in the ownership of the present petitioners.

However, since the father-in-law of petitioner No.1 i.e. respondent No.4 has started living with some other lady, therefore, he intends to dispose of this property by dispossessing the petitioners of the same. In the process, respondent No.4 has gone to the extent of threatening the life and liberty of the petitioners. They had approached the police with their complaint and with a prayer that their life and liberty be protected.

However, the police have not taken any action. Hence, they have approached this Court, for protection of right to their life and liberty, by filing the present petition under Section 482 Cr.P.C.

Heard, the counsel for the petitioners and perused the case file.

Since the present petition has been filed under Section 482 Cr.P.C, it would be appropriate to have reference to Section 482 Cr.P.C., which reads as under:-

"482. Saving of inherent powers of High Court:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

A bare perusal of Section 482 Cr.P.C shows that this Section is not any enabling provision conferring any independent powers upon the High Court. Rather this Section only clarifies that the inherent powers of High Court are preserved, but with a clarification as to when this power can be exercised. As per language of this Section, power under Section can be invoked to give effect to the orders passed under the code or to prevent the abuse of the process of the Court. However, there is third situation also, as contemplated under Section 482 Cr.P.C., which is that the High Court can pass order to secure the ends of justice.

Therefore, it is clear that the power under Section 482 Cr.P.C can be exercised, primarily, only when necessary for giving effect to any order already passed by Courts under any provisions of Cr.P.C or to prevent abuse of the process of the Court against somebody. Both these situations contemplate a perspective where the proceedings under the Code of Criminal Procedure has already been initiated and reached the stage where any Court is seized with the matter under some provision of Cr.P.C. If no proceedings are pending before any Court or adjudicating authority or no statutory order is passed by some authority under provisions of Cr.P.C., then Section 482 Cr.P.C cannot be invoked on the ground of 'giving effect to any order under this Code' or on the ground of 'preventing abuse of process of any Court'. When a petition is filed seeking protection to 'life and liberty' or seeking a decision on some representation, which might have been filed before the police authorities, the petitioner does not seek giving effect to any order passed under this Code or preventing abuse of the process of the Court. Therefore, by any means, a petition seeking 'protection to life and liberty' does not fall in any of the above-said two situations. However, if the proceedings have otherwise been initiated by any Court or any statutory authority under the Code and a person has any grievance against such order or proceedings, other than regarding the protection to life and liberty, he can avail the remedies provided under the Code, and if no remedy is provided against such proceedings, he can even approach the High Court under Section 482 Cr.P.C. Thereafter, it is for the High Court to assess whether any interference is called for or not. But a petition seeking mere relief of protection to life and liberty is not covered by

above-said two phrases used in Section 482 Cr.P.C.

This leads to the third phrase used in Section 482 Cr.P.C i.e. 'or otherwise to secure the ends of justice'. Since Section 482 Cr.P.C is part of Code of Criminal Procedure only, therefore, even this phrase cannot be interpreted as an open-ended power to the High Court to pass any orders under the sun, by travelling outside the scope of Cr.P.C. Therefore, this phrase also encompass only a power to do justice, in accordance with or with reference to the provisions of this Code, and within the scope of this Code. AS mentioned above, if there is any other provision in the Code to secure such ends of justice, then only that provision is to be involved and not the provision of Section 482 Cr.P.C. if there is no other provision in the Code to secure the ends of justice, as required by the proceedings pending under any other provision of this Code, then Section 482 Cr.P.C can be invoked. However, in such a situation also power under Section 482 Cr.P.C can be exercised only if some proceeding already stand initiated by some statutory authority under this Code, or some proceedings are pending before some Court of law under this Code. In any case, this phrase cannot be invoked seeking initiation of any proceeding, taking decision on a representation or for seeking any fresh action on the part of the police, like ensuring protection to life and liberty of a person. The pendency of some proceedings under the Code or already initiated statutory action under this Code is a 'sine qua non' for invoking powers of High Court under this phrase of Section 482 Cr.P.C as well. This legal position has already been clarified by the Hon'ble Apex Court in case of 2012(1)RCR(Crl.)126, State of Punjab vs. Devender Pal Singh Bhullar. It is apposite to have reference of the relevant part of this judgment, which is as under:-

"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 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 unbridled inherent power would itself be trenching upon the authority of the Legislature."

The above-said judgment of the Hon'ble Apex Court has not left any doubt and has amply clarified that Section 482 Cr.P.C is meant to be invoked only for securing justice in proceedings which are pending before the Courts or stand initiated by some authority under this Code. This power cannot be exercised to generate new litigation or to initiate action on the part of any authority under the Code. Still further provision of Section 482 Cr.P.C cannot be invoked if a person has alternate remedy available under this Code, any other law or under the Constitution of India. Still further it is clarified that if a person has a grievance, qua injustice even in those situation where no proceedings are pending before Courts or not so initiated before any authority under the Court, the person is not remediless.

He can approach the Constitutional Court like under Article 226 or Article 32 of the Constitution of India. Therefore, it is clear that this provision cannot be invoked for ordering initiation of new action by any authority under this Code, by passing innocuous and ambiguous orders, like the order for deciding representation by police authorities.

But if the provision of section 482 Cr.P.C cannot be invoked for protection of right to life and liberty and for seeking police action on complaints by people, then, are the people left remediless in this regard? The Answer is -an emphatic No. As clarified by the judgment of the Hon'ble Apex Court, in that situation the remedy would be, by way of writs from Constitutional Courts. The right to life and liberty of a person is a fundamental right granted by the Constitution of India which reads as under"-

"21. Protection of life and personal liberty:-

No person shall be deprived of his life or personal liberty except according to procedure established by law."

Therefore if the person is deprived of this right in accordance with due process of law, then he has to suffer such deprivations without murmur. Hence, even the capital punishment and the life imprisonment are upheld as valid modalities of taking away this right. But if this right of a person is being infringed in violation of due process of law then he can definitely approach the Court for protection of this right. However, in such a situation the remedy would be Article 226 and 32 of the Constitution of India, before the High Court and the Supreme Court, respectively, because these provisions have been specifically created for providing remedy to the persons and citizen for enforcement of their fundamental rights. A bare reading of these provisions, requiring no interpretation, clarifies this aspect. It would not be out of place to have reference to the language of these two provisions at this stage, which is as under:-

Article 226: Power of High Courts to issue certain writs:--

(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of Habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]

(2) The power conferred by clause(1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause(1), without---

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on which the day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by the article shall not be in derogation of the power conferred on the Supreme Court by clause(2) of article 32.

Article 32: Remedies for enforcement of rights conferred by this Part:-

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause(2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

Hence, since a specific remedy is provided in the Constitution itself; for protection of right to life and liberty, therefore, section 482 Cr.P.C cannot be invoked for this purpose.

Likewise, in case the police authorities do not redress the grievance of a person, is that person left remediless? The answer to this question is also a categoric No.- If any statutory proceedings are initiated by police authorities under the Code and then the person has some grievance against such police action, then the remedy is available before the appropriate criminal court, and if none is provided anywhere else; and the case is otherwise covered by expense of section 482 Cr.P.C, then the remedy can be under section 482 Cr.P.C as well. However, if the police authority have not taken any statutory action on grievance or complaint of a person, then such inaction of the police authority is, at the best, an administrative inaction of an administrative authority. Against such inaction or failure to discharge any statutory duty, remedy is available by way of seeking a writ of mandamus. Needless to say that the police department, like any other department of the government is only an administrative division of the government. Unless the police starts exercising its statutory function under some provision of Code or any other criminal law, all its actions or omissions are only administrative actions or inaction's, purely civil in nature. Therefore, appropriate remedy against such action or inaction is seeking a writ of mandamus under Article 226 of the Constitution of India. Since in this regard also a specific remedy is available under the Constitution of India, therefore, power under Section 482 Cr.P.C cannot be invoked even for this purpose.

In the present case, admittedly, there is no dispute qua the ownership of the property involved in the case. Learned counsel for the petitioners has otherwise also not disputed the fact that the property stands in the name of the present

petitioners as per the record and that in case of threat to their right to property, they have the remedy of filing a civil suit. Therefore, the only subsisting prayer; which remains in the petition is, for protection of life and liberty of the petitioners, at the hands of respondent No.4 and his companions. The petitioners claim to have approached the police also. However, the police is stated to have refused to act upon the grievance of the petitioners. Hence, the petitioners apprehend threat to their life and liberty.

As observed above, the right to life and liberty is a fundamental rights of the citizen. This right is contained in Part III of the Constitution of India. For enforcement of fundamental rights, the Constitution of India has made a separate provision under Article 226 of the Constitution of India, as well as under Article 32 of the Constitution. Hence, the petitioners have got direct and more efficacious remedy, by way of filing of a civil writ petition for enforcement of their fundamental rights. Since, there is direct and more effective remedy available to the petitioners, hence the present petition is not maintainable under Section 482 Cr.P.C.

Dismissed as non-maintainable.