

(2025) 01 SHI CK 1685
In the High Court Of Himachal Pradesh
Case No : Cr. MMO No. 1237 of 2024

Sai Infotech Tutu & Another

APPELLANT

Vs

Idyll Institute of Computer Education Pvt Ltd

RESPONDENT

Date of Decision : 02-01-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 159, 173, 173(8), 200, 204, 204(1A),
204(2), 300, 300(1), 465
Indian Penal Code, 1860 — Section 34, 211, 350, 452, 503, 504, 511

Citation : (2025) 01 SHI CK 1685

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Y.P. Sood, Manoj Pathak

Final Decision : Dismissed

Judgement

Virender Singh, J

1. Petitioners have filed the present petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'the BNSS'), for quashing the judgment of conviction dated 24.11.2018 and order of sentence dated 20.12.2018, passed by the Court of learned Additional Chief Judicial Magistrate, Court No.2, Shimla (hereinafter referred to as the 'trial Court'), in Criminal Case No.2407/3 of 2014/13, titled as Idyll Institute of Computer Education Pvt. Ltd versus Sai Infotech Tutu & Another.

2. By way of the judgment of conviction and order of sentence, as referred to above, the learned trial Court has convicted the petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as 'the N.I. Act') and sentenced petitioner No.2, Subhash Singta, to undergo simple imprisonment for a period of six months and to pay a sum of Rs.2,10,000/-, as compensation. In default of payment of compensation, petitioner No.2, has further been directed to undergo simple imprisonment for a period of fifteen days.

3. Thereafter, the petitioners have challenged the judgment of conviction and order of sentence, as referred to above, before the Court of learned Additional Sessions Judge (II), Shimla, (hereinafter referred to as the First Appellate Court'), in Criminal Appeal No.2-S/10 of 2019, titled as Sai Infotech Tutu & Another vs. Idyll Institute of Computer, which was dismissed on 20.04.2024.

4. The petitioners had preferred Criminal Revision No.168 of 2021, titled as Sai Infotech Tutu Gyan Bhawan and Another versus Idyll Institute of Computer Education Pvt. Ltd., before this Court, which was also dismissed on 4.11.2024.

5. Now, by way of the present petition, a prayer has been made to quash the proceedings, mainly on the ground that the petitioners are now ready and willing to settle the matter with the complainant and are also ready to deposit the entire remaining amount. Hence, a prayer has been made to allow the petition.

6. Learned counsel for the petitioners has made efforts to justify the present petition, by arguing that the offence, punishable under Section 138 of the NI Act, is compoundable and the same can be compounded, at any stage.

7. To buttress her contentions, the learned counsel appearing for the petitioners has relied upon the decision of a coordinate Bench of this Court in Cr.MMO No.674 of 2024, titled as Satvir Singh versus Rajesh Pathania & Another, decided on 19.7.2024.

8. The main ground upon which, the present petition has been filed, is that, the petitioners are now ready to compound the offence.

9. Admittedly, in this case, the petitioners have not availed the remedy to assail the order, passed by this Court, on 4.11.2024, dismissing Cr. Revision No.168 of 2021, which was filed against the judgment, passed by the learned First Appellate Court, by virtue of which, the appeal preferred against the judgment of conviction and order of sentence, passed by the learned trial Court, was dismissed.

10. In such situation, the first and foremost question, which arises for determination, before this Court is, as to whether the bar, as, contained, under Section 362 of the Cr.PC (now 403 of the BNSS), can be ignored, by exercising the powers under Section 482 Cr.PC. (Section 528 BNSS).

11. If the present petition is accepted, as prayed for, it would be nothing, but, interfering with the judgment, passed by this Court, on 4.11.2024, by virtue which, the Criminal Revision No.168 of 2021, was dismissed.

12. In other words, the acceptance of the prayer would amount to review the judgment of the same Court, which has earlier dismissed the Revision Petition. The said course is not legally permissible under law, in view of the bar created by Section 362 Cr.PC.

13. Admittedly, at present, no proceedings are pending between the parties before this Court or before the Hon'ble Supreme Court. Although, compounding

can be done, at any stage, but, for invoking the said provisions i.e., Section 147 of the N.I. Act, some proceedings must be pending before any Court.

14. Pendency of the proceedings, before any Court, is sine qua non, for exercising the powers under Section 482 Cr.PC., as, held by a three Judge Bench of the Hon'ble Apex Court, in Ramawatar versus State of Madhya Pradesh, 2021 SCC OnLine SC 966. Relevant paragraph 13 of the judgment, is reproduced as under:-

"13. We, however, put a further caveat that the powers under Article 142 or under Section 482 Cr.P.C., are exercisable in post-conviction matters only where an appeal is pending before one or the other Judicial forum. This is on the premise that an order of conviction does not attain finality till the accused has exhausted his/her legal remedies and the finality is sub-judice before an appellate court. The pendency of legal proceedings, be that may before the final Court, is sine-qua-non to involve the superior court's plenary powers to do complete justice. Conversely, where a settlement has ensued post the attainment of all legal remedies, the annulment of proceedings on the basis of a compromise would be impermissible. Such an embargo is necessitated to prevent the accused from gaining an indefinite leverage, for such a settlement/compromise will always be loaded with lurking suspicion about its bona fide. We have already clarified that the purpose of these extra-ordinary powers is not to incentivise any hollow-hearted agreements between the accused and the victim but to do complete justice by effecting genuine settlement(s)."

(Self emphasis supplied)

15. The powers, under Section 482 Cr.PC. (Section 528 BNSS), are not to be used, in contravention to the specific provisions of the Act. While holding so, the view of this Court is being guided, by the decision of the Hon'ble Supreme Court, in State of Punjab versus Devinder Pal Singh Bhullar and others, (2011) 14 Supreme Court Cases 770. Relevant paragraphs 44 to 64 of the said judgment, are reproduced, as under:

"44. 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.,)

45. 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 vs. M.M. Manikantan Nair*).

46. 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, Deepak Thanwardas Balwani v. State of Maharashtra & Anr. Swarth Mahto & Anr. v. Dharmdeo Narain Singh, Makkapati Nagaswara Sastri v. S.S. Satyanarayan, Asit Kumar Kar v. State of West Bengal & Ors., Vishnu Agarwal v. State of U.P. & Anr.*

47. 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.*

48. 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.

49. 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.

50. "3.....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.

(emphasis supplied)

51. 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).

52. 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 aliunde, 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 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., 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).

53. 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).

54. 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).

55. 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.

56. 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 :

" 48...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.

57. 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.

58. 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).

59. 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. (self emphasis supplied).

60. The rule of inherent powers has its source in the maxim "*Quod lex alicui concedit, 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.

61. 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.

62. 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.

63. 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.

64. 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."

(Self emphasis supplied)

16. This matter can be seen from another angle. Hon'ble Supreme Court in *Damodar S. Prabhu versus Sayed BabaLal*, 2015 (5) SCC 663, has elaborately discussed the provisions of Sections 138 and 147 of the N.I. Act and laid down certain guidelines. Relevant para-21 of the judgment, is reproduced, as under:

" With regard to the progression of litigation in cheque bouncing cases, the

learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:-

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

(Self emphasis supplied)

16. Admittedly, in the present case, nothing has been done by the petitioners, when, the lis was pending before the learned trial Court, Court of Sessions, as well as, before this Court.

17. If the contentions of the learned counsel appearing for the petitioners are accepted, then, instead of filing the present petition, before this Court, the application for compounding should have been filed, before the learned trial Court.

18. The Hon'ble Supreme Court, while issuing directions in Damodar S. Prabhu's (supra) has categorically fixed the amount of compounding fee at different levels. Before the learned trial Court, there is no requirement of paying the compounding fee, if the compounding is done at first or second hearing of the

case, whereas, 10% of the cheque amount is held to be payable, as compounding fee, where, the compounding is done, at the subsequent stage. If the proceedings are pending before the Court of Sessions or before the High Court, the compounding fee is held to be 15%. If the proceedings are pending before the Hon'ble Supreme Court, the Hon'ble Supreme Court has increased the figure, as, 20% of the cheque amount.

19. Merely, on the basis of the said guidelines, the arguments of the learned counsel for the petitioners qua the fact that compounding can be done, at any stage, do not hold water.

20. Even, as per those guidelines, in Damodar S Prabhu's case (supra), an inference can be drawn that sine qua non, for moving the application, for compounding, is pendency of proceedings. Non-filing of the appeal before the Hon'ble Supreme Court against the dismissal of the revision petition, by this Court, resulted into finality of the judgment of conviction.

21. If the present petition is allowed, it would amount to re-opening the matter, which is not permissible under the provisions of Section 482 Cr.PC.

22. Even otherwise, if the prayer is accepted, it would amount to give premium to the accused, for their act of omission, in not preferring the appeal before the Hon'ble Supreme Court against the dismissal of the revision Petition, by this Court, on 4.11.2024, whereas, the present petition has been filed on 3.12.2024.

23. Considering the fact that no appeal has been preferred against the dismissal of the revision petition, by this Court, this Court is of the view that the petitioners could not bring their case within the purview of the exceptions, as, carved out, by the Hon'ble Supreme Court in para 46 of the judgment in Devinder Pal Singh Bhullar's case (supra).

24. In view of the directions, issued, by the Hon'ble Supreme Court, in Damodar S. Prabhu's case (supra), compounding is permissible, at any stage of the proceedings, but, sine qua non a pendency of the proceedings, whereas, in this case, no proceedings, in any Court, are pending, as such, a line has to be drawn, where, the compounding of the offence, could be permitted.

25. If the prayer, at this stage, is accepted, then, there would be no end to the litigation, as, after challenging the judgment of conviction and order of sentence unsuccessfully, which has attained finality, by way of all the legal remedies, available, thereafter, the person, like the petitioners, would approach this Court, under Section 482 Cr.PC. (Section 528 BNSS), to get rid of the judgment of conviction and order of sentence, under the garb of compromise.

26. Considering all these facts, the present petition is not maintainable and the same is accordingly dismissed. The pending application(s), if any, are also disposed of.