

**Mohan Singh and ors. Vs. State**

**Mohan Singh and ors. Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/758222](http://sooperkanoon.com/758222)

**Court :** Rajasthan

**Decided On :** Jan-03-1992

**Reported in :** 1993CriLJ3193; 1993(3)WLC569

**Judge :** K.C. Agarwal, C.J.,; M.B. Sharma and; N.L. Tibrewal, JJ.

**Acts :** [Cattle Trespass Act, 1871](#) - Sections 2 and 20; Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 - Sections 13; Contempt of Courts Act; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 215, 320, 320(1), 320(2), 320(6), 320(8), 320(9), 357, 362, 482 and 561A; Code of Criminal Procedure (CrPC) , 1882; Code of Criminal Procedure (CrPC) (Amendment) Act, 1898 - Sections 345(7); ;Code of Criminal Procedure (CrPC) (Amendment) Act, 1923; ;Code of Criminal Procedure (CrPC) (Amendment) Act, 1955; [Indian Penal Code \(IPC\), 1860](#) - Sections 307, 326, 401 and 420; [Constitution of India](#) - Article 21

**Appeal No. :** L.B.C.M.P. No. 568/1991

**Appellant :** Mohan Singh and ors.

**Respondent :** State

**Advocate for Def. :** K.N. Garg and; M.K. Kaushik, Public Prosecutors

**Advocate for Pet/Ap. :** Ashok Mishra, Adv.

**Judgement :**

**N.L. Tibrewal, J.**

1. This Larger Bench is required to answer the following questions of law referred to it:-

i) Whether composition of offence/offences, except as provided by Section 320 Cr. P.C., can be permitted in exercise of powers under Section 482 Cr. P.C., specially when Sub-section (9) of Section 320 Cr. P.C. expressly prohibits;

ii) If the answer is given in affirmative, whether this permission can be granted after the conviction of the accused under the offence/ offences which is/are not compoundable under Section 320 Cr. P.C.

The necessity to answer second question shall arise only if question No. 1 is decided in the affirmative.

2. The relevant facts necessitating the reference are:

The petitioner-Mohan Singh was convicted and sentenced by the trial Magistrate under Section 326 IPC to one year rigorous imprisonment and to pay a fine of Rs. 1000/- vide judgment dated March 29, 1985 for causing grievous injury to Gulab Singh. He preferred an appeal which was pending for disposal in the court of Additional District and Sessions. Judge, District Jaipur. Before the appellate court, a compromise petition under Section 320 of the Code of Criminal Procedure, 1973 was jointly filed by the petitioners i.e. the accused and the injured. But the prayer was declined by the learned Judge on the simple ground that the offence under Section 326 I.P.C. was not compoundable under Section 320 Cr. P.C. Thereafter, a joint petition by the accused and the injured has been filed before this Court under Section 482 Cr. P.C. with a prayer to direct the lower appellate court to permit them to compound the offence under Section 326 I.P.C.

At the time of hearing of the petition before the single Judge, on the basis of a decision of this Court in Hari Narain v. State of Rajasthan, 1989 RCC 335, it was submitted that the permission to compound the offence under Section 326 IPC can be granted by this Court in exercise of its inherent power under Section 482 Cr. P.C. The single Judge, disagreeing with the view taken in Hari Narain's case

(supra), requested the Hon'ble Chief Justice to constitute a Larger Bench for an authoritative judgment on the questions referred by him. In these circumstances, this Larger Bench has been constituted.

3. The Criminal Procedure Code is a procedural law which provides the procedure for all matters relating to investigation, inquiry and trial of criminal cases, as well as, other connected matters. The- Criminal Procedure Code (Act 10) of 1882 consolidated the earlier Acts and prescribed an uniform law for all courts in India. It was superseded by Act 5 of 1898 and substantial changes were made by Acts of 18 of 1923 and 26 of 1955. There were also local Amendment Acts of several State Legislatures to bring about the separation of the judiciary from the executive. But no comprehensive revision of the old Code of 1898 was attempted until the Central Law Commission was set up in 1955 and it undertook the systematic examination of the Code. The new Code of 1973 is based on the recommendations of the Law Commission made in its comprehensive report for the revision of the Code, i.e. Forty-first Report, The new Code replaces the old Code of 1898.

The new Code has been made exhaustive. A procedural Code however exhaustive, cannot expressly provide for all times to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. Section 482 Cr. P.C. is a legislative recognition of the inherent power of the High Court. It does not confer any new or additional power as the principle upon which it is based was acted upon in many other earlier decisions. Inherent power is conferred under Section 482 Cr. P.C. only on the High Court in view of the general jurisdiction over all the criminal courts subordinate to it, in order to give effect to any order of any such courts under the Code, and to prevent abuse of the process of any such courts or otherwise to secure the ends of justice.

4. Before considering the nature and scope of the inherent power on the High Court under Section 482 Cr. P.C., it is necessary to refer some relevant provisions of the Code.

Section 2(n) defines 'offence' means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the [Cattle Trespass Act, 1871](#) (1 of 1871).

Section 320 Cr. P. C. deals with compounding of offences. Its relevant provisions contained in Sub-sections (1), (2) (6), (8) and (9) read as under:-

'Section 320. Compounding of offences (1) -- The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:--.....

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:-.....

(6) A High Court or Court of Session acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this Section.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.'

The offences specified in the table under Sub-section (1) are compoundable without the court's permission, but the offences in the table under Sub-section (2) cannot be compounded unless the court permits. The offences not specified in the tables cannot be compounded.

It is not disputed that the offence punishable under Section 326 IPC is not specified in any of the two tables and the bar created by Sub-section (9) of Section 320 Cr. P.C. against the composition of offences as provided by this section equally applies to it. The language of sub-section (9) is prohibitory and it creates an injunction against the composition of any offence except as provided by this

section.

5. The nature and scope of the inherent power of a High Court as provided under section 482 Cr. P.C. can be considered in the light of section 482 Cr. P.C. which saves inherent powers of a High Court. Section 482 Cr. P.C. runs as under:-

'Section 482 Cr. P.C.- 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.'

The opening language of the section 'Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court...' makes it clear that powers possessed by the High Court under Section 482 are wide enough to make such orders as may be necessary (i) to give effect to any order under this Code; or (ii) to prevent abuse of the process of any Court; or (iii) otherwise to secure the ends of justice.

When a Court has authority to make an order, it must have power to carry-out into effect, otherwise it will be useless to make it. If such power is not expressly given then it can be exercised by High Court under its inherent power under Section 482 Cr. P.C.

The Criminal proceedings in a subordinate court constitute process of the court. 'Abusing the process of the court' is a term generally applied to a proceeding which is wanting in bona fides and is frivolous. The authority of the court exists for a advancement of justice and if any attempt is made to abuse that authority, the court must have power to prevent it. However, it is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the inherent jurisdiction of the High Court.

But, it does not mean that inherent power do confer arbitrary jurisdiction on the High Court to act according to its whim or caprice. Though the powers possessed by the High court under Section 482 Cr. P.C. are very wide, but the very plenitude

of the power requires from the court great caution in the exercise of it. While exercising such power, the High Court must be careful to see that decision is based on the sound general principles of criminal jurisprudence and is not in conflict with them or with the intention of the legislature as indicated in statutory provisions. It is hardly necessary to add here that inherent power conferred on the High Court has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. The words 'the ends of justice' and 'abuse of the process of the court' must in fact, be construed with due regard to the rest of the provisions of the Code. Section 482 Cr. P.C. is really intended to prevent the courts being rendered impotent by any omission in the Code. After all, procedure, whether civil or criminal, must serve the higher purpose of justice.

6. The learned counsel for the petitioners urged that the embargo contained in subsection (9) of Section 320 against the composition of an offence provided by this section is only for the subordinate courts and it does not limit the powers of a High Court under Section 482 Cr. P.C. to permit compounding of the offence, though not compoundable under Section 320 in order to secure the ends of justice in a given case. According to the learned counsel, any interpretation opposed to it shall lead to injustice and abuse of the process of the court. The learned counsel argued that after all every court has inherent power to act 'ex debito justitiae' to do real and substantial justice for the administration of which alone it exists and if both the parties settle all their scores and want to live amicably then the justice demands that they should be permitted to compound even those offences which are not compoundable in exercise of inherent powers under section 482 Cr. P.C.

The learned counsel for the petitioner has placed reliance on the decisions in Mahesh Chand v. State of Rajasthan, AIR 1988 SC 2111 : (1989 Cri LJ 121), Hari Narain v. State of Rajasthan, 1989 RCC 335, Shiv Nath v. State, 1990 RCC 174 and a Division Bench judgment of this Court in Kailash Bahadur and Ors. v. State of Rajasthan in D. B. Cr. Ref. No. 2/1990 decided on Aug. 16, 1991.

The learned counsel also placed reliance on a Full Bench judgment of this Court in Habu v. State of Rajasthan, 1987 (1) RLR 1 : (AIR 1987 Raj 83) and another Full

Bench judgment of this Court in Noor Taki alias Mammu v. State of Rajasthan, 1986 RLR 195 : (1986 Cri LJ 1488).

On the other hand, the learned Public Prosecutor contended that inherent powers of the High Court under Section 482 Cr. P.C. cannot be invoked in regard to matters which are directly covered by specific provisions of the Code and such power does not extend to what is expressly barred under the Code. According to the learned Public prosecutor, the provision containing inherent power should be construed in the light of other provisions of the statute containing any express limitation or bar on such power. It was also submitted that Section 482 Cr. P.C. does not confer any arbitrary jurisdiction on the High Court so as to act according to its whim or caprice. He further submitted that matter relating to commission of an offence has a wide impact on the society and if the legislature to its wisdom provided only some offences which can be compounded with or without the permission of the Court, the High Court under its inherent powers cannot further legislate and include other offences which are expressly barred in the provision.

7. We have given our anxious and thoughtful consideration to the submissions made from both the sides.

8. Section 482 Cr.P.C. corresponds to old Section 561-A verbatim. In Emperor v. Sukh Dev, AIR 1929 Lahore 705 : (31 Cri LJ 977) a Division Bench of Lahore High Court had an occasion to examine as to whether inherent jurisdiction can be extended in conflict with any of the provisions of law or general principles of criminal jurisprudence. Shadi Lal, C.J. observed as under at page 979 (of Cri LJ) :-

'The inherent jurisdiction of the Court, which receive recognition in Section 561-A, Criminal P.C., cannot be invoked for the purpose of doing an act which would conflict with any of the provisions of the law or the general principles of criminal jurisprudence. The rule of law is firmly established that, when a statute confers upon the Court a specific power, the court cannot, by relying upon its inherent jurisdiction, extend the scope of that power.'

In Vishnu Ghanshyam v. Emperor, AIR 1941 Nagpur 97 : (42 Cri LJ 108) similar view has been expressed by Vivian Bose, J. as under at page 109 (of Cri LJ) :-

'It is urged that the High Court has power under Section 561A, Criminal P.C. But I am clear that that section can have no application to a matter of this kind. That section confers no fresh or new or additional powers on the High Court. It merely states that the existing powers are not circumscribed by anything in the Code of Criminal Procedure except in so far as the sections expressly dealing with them do so. It is well known that inherent powers cannot be invoked where, the Legislature expressly deals with the matter. It has dealt with the matter in this case. It has stated that no proceeding purporting to be taken under the Act shall be called in question except in one particular matter and in one particular way. That is express and absolute. No general section conferring inherent power can be invoked in the face of that.'

In *Kumar Singh Chhajor v. Emperor*, AIR 1946 PC 169 : (47 Cri LJ 933) it was held that no court can claim inherent jurisdiction to exercise powers expressly taken away by legislation.

9. The apex court of the country has considered the nature and scope of inherent jurisdiction in various judgments after the new Code of 1973 came into force and also prior to it.

In *Khushi Ram v. Hashim*, AIR 1959 SC 542 : (1959 Cri LJ 658) a question arose whether inherent powers of High Court under Section 561-A of the old Code could be invoked in regard to matters which were directly covered by specific provisions of the Code. Under Criminal Procedure Code of 1898 commitment provisions (proceedings) could be quashed on a question of law only. In that case the Magistrate committed the accused persons to trial before the court of session for various offences. The commitment order was questioned before the Allahabad High Court by an application under Section 561-A of the Code. The High Court made interference with the order of commitment on the merits of the case invoking inherent jurisdiction under Section 561-A. While dealing the matter, the Supreme Court observed that a distinction must always be drawn between absence of legal evidence and absence of reliable evidence. If it could be said with justification that there was no legal evidence at all in support of the prosecution case, it may lead to the inference that the commitment was bad in that it was not based on any legal

evidence at all. But on the other hand, where circumstances are relied upon to show that the evidence may perhaps be not believed they do not lead to the inference that there is no legal evidence on the record. It was then observed at page 659 (of Cri LJ):-

'It is unnecessary to emphasise that the inherent power of the High Court under Section 561-A cannot be invoked in regard to matters which are directly covered by the specific provisions of the Code; and the matter with which the learned Judge was concerned in the present proceedings is directly covered by Section 215. Therefore, in our opinion the learned Judge was clearly in error in allowing his inherent power to be invoked under Section 561A and in setting aside the order of commitment.'

In *R. P. Kapur v. State of Punjab*, AIR 1960 SC 866 : (1960 Cri LJ 1239) a similar view was expressed that inherent power cannot be exercised in regard to matters specifically covered by other provisions of the Code.

10. In *Ramesh Chandra v. A.P. Jhaveri*, AIR 1973 SC 84 : (1973 Cri LJ 201) the facts were that a complaint was filed against two accused persons for having committed offences under Section 420 IPC and Section 13 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (Act 45 of 1963). The charges were also accordingly framed against the accused-persons. In the course of the trial, the accused were acquitted as the parties made an agreement whereby the accused under-took to do certain things within a certain period and on such undertaking the complainant did not wish to proceed with the trial. Then, a contempt petition was filed by the complainant before the Magistrate that the accused did not fulfil the undertakings as per the agreement. The Magistrate forwarded the papers to the High Court for initiating contempt proceedings against the accused persons. When the matter came before the Division Bench of the High Court the learned Judges took the view that it was not a fit case in which action under the Contempt of Courts Act was called for against the accused. However, the learned Judges were of the view that it was a fit case in which the order of acquittal made against the accused be set aside and a notice was given to the accused that why the order of

acquittal should not be set aside. Consequently, the High Court set aside the order of acquittal and directed the trial Magistrate to proceed with the trial from the stage at which the complainant was persuaded not to press the complaint. Against that order, an appeal was preferred before the Supreme Court by one of the accused.

The Supreme Court found that the complaint related to two kinds of offences viz. Section 420 IPC and Section 13 of the Maharashtra Act. So far the offence under Section 420 IPC was concerned, it was compoundable with the permission of the court, but the offence under Section 13 of the Maharashtra Act was, however, not compoundable either with or without the permission of the court. The Supreme Court upheld the order of the High Court observing at page 204 (of Cri LJ):-

'It would follow from the above that where an acquittal is based on the compounding of an offence and the compounding is invalid under the law, the acquittal would be liable to be set aside by the High Court in exercise of its revisional powers. As the acquittal of the appellant by the trial court in the present case was based upon the compounding of an offence which was not compoundable, the High Court in our view rightly set aside the acquittal of the appellant.'

The Supreme Court further held :-

'That no valid permission could be granted for compounding of an offence under Section 13 of the Maharashtra Act and the permission was invalid in its entirety as it was not permissible in such an event to sever the permission into two parts and to uphold it so far as the offence under section 420 IPC is concerned and hold it to be invalid in respect of the offence under Section 13 of the Maharashtra Act.'

This decision, thus, lays down that composition of offences which are not permissible according to sub-section (7) of Section 345 of the Code of Criminal Procedure 1898 is invalid in its entirety. Sub-section (9) of Section 320 of the Code 1973 corresponds to sub-section (7) of Section 345 of the old Code of 1898 and the aforesaid view of the Supreme Court equally applies to the offences which are not compoundable under Section 320 of the new Code.

11. In *Palaniappa Gounder v. State of T. N.*, AIR 1977 SC 1323 : (1977 Cri LJ 992) question arose before the Supreme Court as to whether in view of express provisions contained in Section 357 Cr. P.C. the High Court had power to pass an order for compensation under Section 482 Cr. P.C. The Court held:-

'A provision which saves the inherent powers of a Court cannot override any express provision contained in the statute which saves that power. This is put in another form by saying that if there is an express provision in a statute governing a particular subject matter there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject matter. From this it will be clear that the application made by the heirs of the deceased for compensation could not have been made under Section 482 since Section 357 expressly confers power on the Court to pass an order for payment of compensation in the circumstances mentioned therein.'

(Emphasis supplied)

12. In *Madhu Limaye v. State of Maharashtra*, AIR 1978 SC 47 : (1978 Cri LJ 165) the Supreme Court expressed that the High Court possessed and possesses the inherent powers to be exercised 'ex-debito justitiae' to do real and substantial justice for the administration of which alone court exists. However, in relation to the exercise of such inherent powers, the following principles were laid down:-

- i) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- ii) That it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;
- iii) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

In *Sooraj Devi v. Pyarelal*, (1981) 1 SCC 500 : (1981 Cri LJ 296) it has been reiterated that inherent power could not be exercised for doing that which is specifically prohibited by the Code.

In *Mst. Simrikhia v. Smt. Dolley Mukherjee*, AIR 1990 SC 1605 : (1990 Cri LJ 1599), the apex court of the country has again held :-

'The inherent powers, however, as such are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.'

It was then observed : -

'inherent power under Section 482 Cr. P.C. is intended to prevent the abuse of the process of the court and to secure ends of justice such power cannot be exercised to do something which is expressly barred under the Code.'

(Emphasis supplied)

13. Now, we may also consider the various decisions relied upon by the learned counsel for the petitioners. In *Mahesh Chand v. State of Rajasthan*, the Supreme Court had, no doubt, directed the trial court to accord permission to compound the offence under Section 307 IPC even though this offence is not compoundable under the law. This was permitted as a special case in view of the peculiar circumstances of the case. But, in this case, the Supreme Court has nowhere held that the High Court has inherent power under Section 482 Cr. P.C. to permit composition of offence which is not otherwise compoundable under the law. Therefore, this judgment cannot be an authority to lay down a proposition of law, as argued by the learned counsel for the petitioners. It may be stated here that in special cases, the Supreme Court may have power to direct compounding of non-compoundable offence, but High Court has no such power.

The Single Bench judgments of this Court in *Hari Narain v. State of Rajasthan* and *Shiv Nath v. State* are based on the judgment of the Supreme Court in *Mahesh Chand v. State of Rajasthan*. In *Mahesh Chand's* case, as we have already seen it was nowhere held by the Supreme Court that High Court could allow composition of a non-compoundable offence in exercise of its inherent power under Section 482 Cr. P.C.

A Division Bench of this Court in *Kailash Bahadur v. State of Raj.* has, no doubt, held in the affirmative that in exercise of inherent power of the High Court a direction can be issued to lower court to give permission to compound a non-compoundable offence. With due respect this view of the Bench is not a correct proposition of law and runs counter to the proposition of law laid down by the apex court of the country. Accordingly, we overrule the Bench decision in *Kailash Bahadur v. State of Raj.*

The Full Bench decisions of this Court in *Noor Taki alias Mammu v. State of Raj.* and *Habu v. State of Raj.* relied upon by the learned counsel for the petitioners, are quite distinguishable and provide no assistance to lay down the proposition that composition of offence which is not compoundable under Section 320 Cr. P.C. is permissible by the High Court in exercise of its power under Section 482 Cr.P.C.

In *Noor Taki alias Mammu* it was held that if the detention of the approver had become so much prolonged which would otherwise out-live the period of sentence, if convicted, he can be enlarged on bail in exercise of power under Section 482 as his detention can be declared to be illegal and violative of Article 21 of the Constitution. Whatever has been held in this decision is in the context of the facts and circumstances of that case.

Similarly, in *Habu v. State of Raj.* the question before the Full Bench was as to whether the judgment given in absence of appellant and or his counsel can be recalled by the High Court in exercise of powers under Section 482 and the Full Bench of this Court held that the power of recall is different from the power of altering or reviewing judgment as provided under Section 362, Cr. P.C., as such, the bar contemplated under Section 362, Cr. P.C. has no application in such matter. Hence, this decision is not an authority to lay down that inherent powers cannot be exercised by the High Court under Section 482, Cr. P.C. against the express bar of law engrafted in any other provision, of the Code.

14. Having discussed above, the following principles may be laid down in relation to the exercise of inherent power of the High Court under Section 482, Cr. P.C. :-

(i) That the High Court possesses the inherent power to be exercised 'ex debito justiae' to do the real and substantial justice for the administration of which alone court exists. But, such powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice;

(ii) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(iii) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party; and

(iv) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

15. Applying the above principles, question No. 1 is answered in negative, and it is held that in view of express bar contained in Sub-section (9) of Section 320, Cr. P.C., the High Court cannot, in exercise of its inherent power under Section 482, permit composition of an offence which is not compoundable under Sub-section (1) or Sub-section (2) of Section 320 of the Code.

As question No. 1 has been answered in negative, the second question does not arise for consideration.

**M.B. Sharma, J.**

16. I agree.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**