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INHERENT JURISDICTION UNDER SECTION 528 BNSS IN A LENS OF JUDICIAL PRAGMATISM

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ABSTRACT

Approaching the major issues, not only in law but in all spheres, with lens of pragmatism, offers to ease the layers of labyrinth and also, a strong, engine to guide futuristic models in public – domain. Pragmatism as such follows an established truism. "Change is the only constant." Any review through the lens of judicial pragmatism enables to have relook over crisis management in law. The instant matter of bi – furcating the inherent jurisdiction of High Courts u/s 528 B.N.S.S. (old 482 Cr.P.C.) no longer stays to be tagged as shooting off the cuff as Law Commission of India has thrown its weight behind this argument thrice in its 14th, 41st & 141st Reports. Briefly stated, the underlying principle of inherent jurisdiction u/s 528 B.N.S.S. is to prevent abuse of the judicial process and to secure the ends of justice and in such cases, the court is duty bound to correct its own errors as a matters of right, not discretion or favour, even if the court may have to step out of standard procedure or rules. Thus, it's all about recalling the illegal order *ex debito justitiae* for the sake of real justice. The instances which lead to the invoking of inherent powers u/s 528 B.N.S.S., are mainly abuse of process of courts and attempts to thrust the securing the ends of justice in criminal matters. Having regard to the mammoth pendency of criminal cases in District Courts across the country, i.e., more than 3 Crores at present, redressal of such issues arising in District Courts, may be much better and timely made at the level of Sessions Courts than High Courts.

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The existing remedy to approach High Courts u/s 528 BNSS, not only entails inordinate time spells & considerable costs but also adds to hardships of the litigant, When the District Judges can exercise inherent jurisdiction on civil side u/s 151 C.P.C., there appears no justification in denying the criminal version of inherent powers to the Sessions Judges. It's no longer an academic bubble or a time pass for shooting the breeze anymore, but a whole lotta jurists are all into it who too feel the same way. There exist both administrative & judicial/ legal reasons to support this argument.

Keywords: Inherent Jurisdiction, Section 528 B.N.S.S., Law Commission Reports, High Court, District Judiciary, Pendency.

Introduction

The objective of this research paper is not to trigger any debate on complete cessation of inherent jurisdiction of High Courts u/s 528 B.N.S.S. but the bifurcation of powers to Sessions Courts with regard to the orders passed by judicial Magistrates.

Approaching the major issues, not only in law but in all spheres, with lens of pragmatism, offers to ease the layers of labyrinth and also, a strong, engine to guide futuristic models in public – domain. Pragmatism as such follows an established truism. "Change is the only constant." Any review through the lens of judicial pragmatism enables to have relooked over crisis management in law.

Present legal position with regard to S. 528 B.N.S.S. & its jurisdiction, prima – facie, presents a fallacious impression and it is not doing any substantial service except to paper – over the hidden problem making us to believe as if no such issue exists. Thus, this research paper endeavors to embark upon a liminal phase with regard to conferring the inherent jurisdiction to criminal courts by bridging the gap between past & present.

It's an irony that many age old legal provisions which have since acquired the dubious distinction of cliché, have not been revisited under the theory of judicial pragmatism. This failure to tweak laws compatible with current requirements, is now well manifested in the form of humongous pendency of cases.

The instant matter of bi – furcating the inherent jurisdiction of High Courts u/s 528 B.N.S.S. (old 482 Cr.P.C.) no longer stays to be tagged as shooting off the cuff as Law Commission of India has thrown its weight behind this argument thrice in its 14th, 41st & 141st Reports.

Briefly stated, the underlying principle of inherent jurisdiction u/s 528 B.N.S.S. is to prevent abuse of the judicial process and to secure the ends of justice and in such cases, the court is duty bound to correct its own errors as a matters of right, not discretion or favour, even if the court may have to step out of standard procedure or rules. Thus, it's all about recalling the illegal order *ex debito justitiae* for the sake of real justice.

Background

Before studying the *mise – en – scene* of the instant issue, it would be apt to refer the previous reports of Law Commission of India, especially the 14TH Report titled "Reform of Judicial Administration" submitted way back in 1958, chaired by Hon'ble Justice Shri M.C. Setalvad which for the first time

highlighted the significance of inherent jurisdiction (for High Court) and led to the birth of S. 482 in the Cr.P.C. This recommendation triggered the debate over the leeway of inherent jurisdiction in criminal matters. The ideology set forth in the 14TH Report was seconded by 41ST Report and 141ST Report submitted in 1991, all recommending the amendment in S. 482 of Cr.P.C. to the effect that it may be renumbered as S. 482 (1) and a new sub – section (2) as below may be added:-

"482(2). Criminal Courts other than the High Courts shall also have inherent powers to make such orders as may be necessary to prevent abuse of the process of the Court or otherwise to secure the ends of justice."

Thus the journey of 33 years from 1958 to 1991 has consistently emphasized the need for conferment of inherent jurisdiction to Criminal Courts too to address the instances of abuse of judicial process at the end of Trial Courts.

Significance

The relevance of the instant issue goes without saying as humongous pendency of criminal cases especially those which are waiting for corrections in illegalities or corrective measures for prevention of abuse in the judicial process, may be directly attributed to the lack of inherent jurisdiction to the criminal courts, resulting in great gridlock in resolution of such cases at the end of High Courts. To sum up, the significance maybe categorized chiefly in the following points: -

i) The inherent powers in criminal matters are presently vested only in the High Courts which itself has contributed greatly to longstanding gridlock of cases requiring urgent steps to prevent abuse of judicial process and to secure the ends of justice.

ii) It is the litigants who have to bear the brunt of engaging further in unnecessary litigation before the High Court's resulting in waste of both money and time.

iii) During the pendency of petitions u/s 528 B.N.S.S. before High Courts, the proceedings in main – cases before subordinate criminal courts, automatically get stayed for a long time, defeating the very purpose of justice.

iv) The High Court's being Constitutional Courts are supposed to focus on constitutional matters and Others of national importance rather than spending time on hearing cases u/s 528 B.N.S.S. which are minor cases relating to corrections in judicial process.

Research Objective

The very *raison de'tre* of any law depends on its evaluation and rules of scansion to find out if the provisions really yielded the desired results for which they are intended and enacted. This further prompts us to study the legal provisions afresh under teleological lens. It is on these lines, an endeavor is made in the present write up to scrutinize the scope of inherent jurisdiction u/s 528 B.N.S.S. prevalent today in our judicial system so that kaleidoscopic study may be undertaken for a comprehensive and holistic approach in the matter.

Scope

The main object and scope of this research is to widen the horizon of inherent jurisdiction so as to extend their ambit to the criminal courts partly so that the Sessions Court may also hear the matters about abuse of judicial process in the matters arising out of the Court of Judicial Magistrates.

Limitations

The only moot question in the present issue is about the part or full conferment of inherent jurisdiction upon the criminal courts (Sessions Courts), and it is up to the wisdom of our jurists and law makers to consider the effects and bring about suitable amendments.

Research Question

Whether inherent jurisdiction conferred upon High Courts u/s 528 B.N.S.S. can be partly allowed to be exercised by Sessions Courts only in the matters of abuse of process or securing the ends of justice arising from the proceedings of subordinate criminal courts?

Statement of Research Problem

This research seeks to critically explore the existing ambit of Section 528 BNSS, with a view to strengthen the criminal justice system by vesting the Sessions Courts too with partial inherent powers in criminal matters requiring intervention at the stage of Subordinate courts of Magistrates with the objective to minimize unnecessary Litigation delay & expenses .

Research Methodology

Doctrinal Research Based on Extensive Literature Review of relevant laws and cases. A detailed review of several research papers has been carried on to develop a precise opinion for the problem in

question. The methodology adopted in this Research paper is multipronged. To sum up, the low-down is:

1) Studying the present compelling realities, which have necessitated a recalibration;
2) Critical evaluation of criminal justice system with reference to Section 528 BNSS;
3) Judicious evaluation of the merits vis a vis demerits;
4) Pragmatic solutions within the legal framework.

Literature Review

Contradictory vis –a – vis Complementary

In embarking upon the research on diversifying the inherent jurisdiction to criminal courts, it would not be out of context to state here that the exercises undertaken so far to tweak the old Cr.P.C. provisions by mere rebadging them often messed the route and instead of seeing the things in the lens of pragmatism, the whole attempt was rendered at last, wide of the truth/ reality & remained un – noticed too.

Time has therefore now come to think out of the box and shed Neanderthal approach towards present day judicial requirements of 18,735 criminal courts in the country.

The idea to bifurcate the inherent jurisdiction u/s 528 B.N.S.S. as mooted in this research paper, is not therefore contradictory but complementary in as much as, this idea addresses many shortcomings in dispensation of criminal justice, to name a few:-

i) The present exclusive jurisdiction to High Courts entails considerable time & cost
ii) The litigants have to cough – up heavy cost by way of engaging separate advocates in High Courts, which makes the justice – delivery more difficult.
iii) During the pendency of petitions u/s 528 B.N.S.S. before High Courts, the proceedings in main – cases before subordinate criminal courts, automatically get stayed for a long time, defeating the very purpose of justice.
iv) The High Courts being Constitutional Courts are supposed to focus on constitutional matters and Others of national importance rather than spending time on hearing cases u/s 528 B.N.S.S. which are minor cases relating to corrections in judicial process.

The idea also gets further support from the fact, that when the District Judges can exercise inherent jurisdiction on civil side u/s 151 C.P.C., there appears no justification in denying the criminal

version of inherent powers to the Sessions Judges.

Main Analysis & Findings

The official figures by National Judicial Data Grid (herein after referred to as N.J.D.G.), too send some strong signals in this regard. The state put the total pendency of Criminal Cases at more than 3 crores before the criminal courts across the country, whereas High Courts overall share of criminal cases is paltry at 19 lakhs only in the country. Going by broad guesstimation, the appropriate percentage of petitions u/s 528 B.N.S.S. in the High Court taken – together floats around 12 – 14% at National Level which comes to around 2.5 lakh pan India. The N.J.D.G. has not given any separate depiction about pendency figures of petitions u/s 528 B.N.S.S. in the High Courts.

On one hand, these 2.5 lakhs petitions u/s 528 B.N.S.S. are awaiting disposal by High Courts, on the other, their equal number of main cases are hanging in uncertainty at the end of Sessions Courts/ criminal courts.

An important observation was made by Kerala High Court in State of Kerala, 1973[5], when the Division Bench held that though the Section (482 Cr.P.C./ Now S. 528 B.N.S.S.) is silent on granting any inherent jurisdiction to the Subordinate Courts, but the omission does not mean that the Subordinate Courts can't exercise inherent powers. Going further, Orissa High Court has held in Ramesh Chandra Das Vs. Premlata Patra[6], that "….. every Court in the absence of express provision in the Code, is deemed to possess powers necessary to do the right & undo a wrong in course of administration of justice ….."

As per stats, these are around 18,735 District & Subordinate Courts in our country, which are grappling with the load of 3 crores criminal cases. For want of inherent jurisdiction to correct errors in these 3 crores cases matters go to only 25 High Courts & 14 Benches for adjudication only to meet the fate of crawling in High Courts, as High Courts too are functioning with 26 – 30% vacancies.

The instances which lead to the invoking of inherent powers u/s 528 B.N.S.S., are mainly abuse of process of courts and attempts to thrust the securing the ends of justice in criminal matters. Having regard to the mammoth pendency of criminal cases in District Courts across the country, i.e., more than 3 Crores at present, redressal of such issues arising in District Courts, may be much better and timely made at the level of Sessions Courts than High Courts.

[5] Cr.L.J. 1288
[6] 1988 (3) Crimes 87, 89 (Ori.)

Some cases in points, may be stated for corroboration of this argument, where the Criminal Revisions are dismissed in default of appearance, even if bona fide is shown, it can't be restored due to bar u/s 403 B.N.S.S. (old 362 Cr.P.C.), Or where an accused is acquitted u/s 279 B.N.S.S. (old 256 Cr.P.C.) or a case is dismissed in default, such order can't be restored nor the acquitted can be set aside later by the Sessions Courts,.

It would be appropriate to recapitulate important observations made by Hon'ble Supreme Court of India in the following reported citations, with regard to exercise of inherent jurisdiction by the Subordinate Courts to secure the ends of justice: -

"The absence of any reference to any other criminal Courts does not necessarily imply that such Courts can in no circumstances exercise inherent power for it is a well-established principle that every Court has inherent power to act *ex debito justitiae* to do that real and substantial justice for which alone it exists or to prevent the abuse of its own process. It is inherent in the general jurisdiction of the court "to act rightly and fairly according to the circumstances towards all parties involved" [Jai Berhma[7]]. Every Court has inherent power to act *ex debito justitiae*, to do real and substantial justice for which alone the court exists. To secure the ends of justice is the prime obligation of the Court system. The expression "nothing in this Code shall be deemed to limit or affect the inherent power" appears to be in favour of preserving the amplitude of the inherent power. The wholesome provisions of section 482 are to be utilised for achieving the ends of justice and to secure the ends of justice [Sorbeshwar Mili Vs. Meghraj Malla[8]]."

"Though CrPC does not contain any express provision like section 151 CPC recognising the existence of inherent powers in subordinate courts and section 482 is limited in terms to High Court, there is sufficient authority for the view that even subordinate criminal Courts have limited inherent powers and in exercise of those powers they may review and revise their orders for the ends of justice except in those cases where the court itself either expressly or by necessary implication prohibits such review or revision and confers on the order the kind of finality until it is set aside by superior Courts in appeal or revision [Krushna Mohan Vs. Sudhakar Das[9]]."

"All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitutions, all such powers as are necessary to do the right and undo a wrong in the course of administration of justice.

[7] A.I.R. 1922 P.C. 269 : 2 P. 10 : 49 I.A. 351

It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which courts done. In exercise of inherent power courts would be justified to quash abuse of the powers exists of court or quashing proceedings would otherwise serve the ends of justice [Minu Kumari v State of Bihar[10]]."

Conclusion & Solution

This idea of opening doors of inherent jurisdiction to criminal courts can be complementary so much so that it may be implemented with ease by partly empowering all the Sessions Courts to exercise inherent jurisdiction u/s 528 B.N.S.S. only in the matters of abuse of judicial process or for securing the ends of justice, arising from the courts of Judicial Magistrates as it sits in Appeal over their Orders.

We would rather suggest to avoid wading into debate over complete conferment of inherent jurisdiction to the Sessions Courts by taking away from the High Courts, it is therefore, humbly suggested to focus on amending the very import of S. 528 B.N.S.S.so as to bring rationality.

However, the matters of abuse of judicial process & like, arising from the proceeding of Sessions Courts, may be continued to be challenged before the High Courts as it is.

Such part conferment of inherent jurisdiction to Sessions Court would not, in any way, curtail the superiority of High Courts as Art. 227 of the Constitution of India, guarantees wide powers to High Courts to address any illegality in any judicial order passed by the subordinate courts.

In addition to this, Revisionary jurisdiction u/s 442 B.N.S.S. also gives additional teeth to High Courts to correct illegalities in the proceedings before Trial Courts.

The idea of part conferment of inherent jurisdiction upon the Sessions Court is so deeply impactful that it can't be tossed out without convincing solutions, therefore, if not fully, a kind of part conferment of inherent jurisdiction upon criminal courts, is definitely required today. This research paper doesn't suggest anything which flips the legal position between High Courts & Sessions Courts on their head, but what we propose is to bridge the gap with rationality. We would be tripping ourselves if we ignore our own mistakes.

[8] 1982 Cr. L.J. (N.O.C.) 50 (Gau.)
[9] A.I.R. 1953 Ori. 281 : 1953 Cr. L.J. 1726 : 19 Cut. L.T. 330 : I.L.R. (1953) Cut. 311
[10] (2007) 1 Mad. L.J. (Crl.) 357 (S.C.)]

Signing off this research with very apt lines – "Justice delayed by design can not be justice denied by blame." We can't really indict our judicial system for delay & pendency when the law itself is shackled in inertia.

In order to secure true ends of justice within definite time – frame, Section 528 B.N.S.S. is required to be tweaked suitably by conferring appropriate inherent jurisdiction upon the criminal courts to timely address legal errors in more than 3 crores criminal cases.

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