

DINESH DUTT JOSHI
v.
THE STATE OF RAJASTHAN AND ANR.

OCTOBER 1, 2001

[M.B. SHAH AND R.P. SETHI, JJ.]

Code of Criminal Procedure, 1973 :

*S. 482—Inherent powers of High Court—High Court, without issuing notice and hearing the accused, setting aside order of his discharge passed by trial court—Two accused prosecuted for committing offences punishable under s.13(1)(d) read with s.13(2) of Prevention of Corruption Act and s.120-B IPC—Trial court discharging one of them, framed charges against the other who filed a revision petition before High Court—High Court dismissing the revision and, exercising jurisdiction u/s 482 but without issuing notice and hearing the accused discharged by trial court, setting aside order of his discharge observing that discharge of the main accused has resulted into abuse of process of court—Appeal by accused who had been discharged by trial court—Held, the principle embodied in s.482 is based upon the maxim: *Quando lex aliquid alicuiconcedit, concedere videdur id quo res ipsa esse non protest—However, use of this extra ordinary power is required to be reserved, as far as possible, for extra ordinary cases—Matter remanded to High Court for passing appropriate order after hearing appellant—Counsel for appellant has conceded that no fresh order be served and this order be deemed to be a notice served upon the appellant to show cause as to why order of trial court discharging him be not set aside and he be charged for the offences punishable under Prevention of Corruption Act.**

Legal Maxim :

Quando lex aliquid alicuiconcedit, concedere videdur id quo res ipsa esse non protest—Explained.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1004 of 2001.

From the Judgment and Order dated 26.4. 2001 of the Rajasthan High Court in CrI. M.P. No. 734 of 1993.

B.D. Sharma for the Appellant.

A Manish Singhvi and Javed Mahmud Rao for the Respondents.

The following Order of the Court was delivered :

Leave granted.

B The appellant is alleged to have demanded bribe money of Rs. 1200 as
illegal gratification for providing electric connection to one Sarup Singh. On
the complaint of said Sarup Singh a trap is stated to have been laid by the
C police. According to the prosecution, the currency notes valuing Rs. 1200,
which was dusted with phenolphthalein powder were paid to Tejpal Singh as
per directions of the appellant herein. The raiding party recovered the amount
D from Tejpal Singh who, upon enquiry, stated that he had received the amount
from Sarup Singh as per instructions of the appellant. After completion of the
investigation a final report was submitted in the Court of sub-Judge, Jodhpur
against the appellant and Tejpal Singh for the commission of offences punishable
under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption
Act and Section 120-B of the Indian Penal Code.

E The trial court framed charges against Tejpal Singh but discharged the
appellant vide its orders dated 10.12.1993. Dissatisfied with the order of
framing the charge against him, Tejpal Singh, accused filed a revision petition
in the High Court which was dismissed vide the order impugned in this petition.

F While dismissing the revision petition of Tejpal Singh, the learned Judge,
in exercise of the powers under Section 482 of the Code of Criminal Procedure,
set aside the order of the trial court in so far as it related to the appellant and
directed the Special Judge to frame charges against him also for the offences
punishable under the provisions of Prevention of Corruption Act.

While setting aside the order of discharge passed in favour of the appellant,
the learned Single Judge held :

G "Under Section 482 Cr.P.C. this court has inherent powers to make
such orders as may be necessary to give effect to any order under this
court or to prevent abuse of process of any court or otherwise to secure
the ends of justice.

H I am of the considered opinion that this is a fit case where this Court
should exercise its powers under Section 482 Cr.P.C. where the learned
Special Judge by this very impugned order discharged the main accused

because by discharging him it has resulted into abuse of process of court, therefore, to secure the ends of justice, the impugned order passed by the learned Special Judge discharging the main accused has to be quashed and set aside.

I am conscious of the fact that this order is passed against the main accused Dinesh Dutt Joshi without hearing him. In ordinary circumstances, if the matter had come before me for admission in 1993, I would have certainly issued notice against him and then passed the order but already by now 8 years period has passed and when no other view is possible, then to extend an opportunity of hearing and then to pass any order would be an exercise in futility. If I had issued a notice at this stage, then an attempt would have been made to avoid the service and delay the hearing of the matter which is sufficiently delayed.

When I have set aside the order passed by the learned Special Judge discharging the main accused, then learned counsel Mr. Bora was unable to press this petition because his main grievance was that if the main accused is discharged then his client co-accused petitioner cannot be charged.

In view of the above, the petition filed by the present petitioner against the impugned order dated 10.12.93 passed by the learned Special Judge framing charges against the petitioner for the aforesaid offences is dismissed.

However, the impugned order dated 10.12.93 passed in favour of the main accused Dinesh Dutt Joshi whereby he was discharged by the learned Special Judge is hereby quashed and set aside in exercise of inherent powers of this court under Section 482 Cr.P.C."

Section 482 of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of the any Court or otherwise to secure the ends of justice. It is well established principle of law that every Court has inherent power to act *ex debito justitiae* - to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. The principle embodied in Section is based upon the maxim : Quando lex alicui concedit, concedere videtur

- A** *id quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. Section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the Section. As Lacunae are sometimes found in procedural law, the Section has been embodied to cover such Lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this Section are however required to be reserved, as far as possible, for extraordinary cases.
- B**

- C** Learned counsel appearing for the respondents has not seriously disputed the power of the High Court to pass appropriate order in exercise of its jurisdiction under Section 482 of the Code but has contended that no such order could be passed without notice to the person likely to be affected by the proposed order. We find substance in the submission of the learned counsel. The admitted position is that before exercising the powers under Section 482 of the Code of Criminal Procedure, the High Court did not think it proper to serve a notice upon the appellant asking him to show cause against the proposed order of setting aside the order of discharge passed in his favour by the trial court. We refrain from commenting upon the merits of the case and feel that the ends of justice would be served if the case is remanded back to the High Court for passing fresh orders after affording the appellant an opportunity of being heard.
- D**

- E** Under the circumstances the impugned order is set aside and the case remanded back to the High Court for passing appropriate orders after hearing the learned counsel for the appellant on the question of framing the charges. This order shall be deemed to be a notice served upon the appellant to show cause as to why the impugned order be not set aside and he be charged for the offences punishable under the Prevention of Corruption Act. Learned counsel for the appellant has conceded that no fresh notice be served. The appeal is disposed of accordingly.
- F**

R.P.

Appeal disposed of.