

## Understanding Section 482: The High Court Quash Petitions

For most victims of 498A, a quash petition sounds like the perfect solution to solve their problem. The FIRs will have so many ridiculous charges in it, that people think, that by approaching the High Court with a quash petition, the HC will run through the petition and the quash order will follow. The lawyers often mislead the victims of 498A sometimes due to ignorance, and at other times, for other motives.

After hearing enough about quash petitions and seeing how some of these petitions linger on in the HC, or go on with no end in sight, I decided to delve into what these quash petitions are about.

I know of a case where a quash petition has gone from the High Court to the Supreme Court and it is still going on years after it was first filed.

The quash petition is filed under Section 482 Of CrPC. It reads:

### **Code of Criminal Procedure 1973, Section 482:**

#### **Saving of inherent power 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 this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

A bare look at this provision would show that while exercising such inherent powers, the High Court must be satisfied that either:-

- (i) An order passed under the Code would be rendered ineffective; or
- (ii) The process of any court would be abused; or
- (iii) The ends of justice would not be secured. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing

The definitive judgment, in which the powers of the High Court to quash a case, are defined in State of Haryana Vs. Bhajan Lal, 1992. In this judgment, the Supreme Court has stated that:

“The investigation of cognizable offense is the field exclusively reserved for the police officers whose powers that field are unfettered so long as the power to investigate into cognizable offenses is legitimately exercised in strict compliance with the provisions falling under chapter XII of the code and the Courts are not justified in obliterating the track of investigation when the investigation agencies are well within the legal bounds as afore mentioned. Indeed a noticeable feature of the scheme under Chapter XIV of the code is that a Magistrate is kept in picture at all the stages of the police investigation but he is not authorized to interfere with the actual investigation or to direct the police how the investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudices to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of the police echelons since human dignity is a dear value of constitution”

In the same judgment, the Supreme Court also states that the High Court is entitled to exercise its inherent jurisdiction for quashing a criminal proceeding or an FIR when the allegations made in the same do not disclose the commission of an offence and that it depends upon the facts and circumstances of each particular case. The Supreme Court pointed out certain category of cases by way of illustrations wherein the inherent power under Section 482 of the Code can be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice.

Here are the categories of cases in which the High Court can exercise its powers to quash a petition: -

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police office without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

There is another category under which a quash petition may be entertained and that is one of inordinate delay where a lethargic delay in the investigation may lead to a quash petition.

Here, is the ruling by the SC (State of Andhra Pradesh vs P.V. Pavithran-1990), I quote:

“A lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence and inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation. However, there are offences of grave magnitude, which would necessarily involve considerable time for unearthing the crimes and bringing the culprits to book. Therefore, it is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed.”

Jurisdiction is another area which may be the grounds for a quash petition. The Supreme Court, in *Y. Abraham Ajith and others v. Inspector of Police, Chennai and others* [2004 SCC (Cri) 2134], has dealt with the place of jurisdiction vis-à-vis the offences alleged to have been committed. Incidentally, it was also a case of strained relationship between the husband and wife. All the alleged offences were committed according to the complainant at Nagarcoil but the wife filed the complaint at Chennai Court. The Hon'ble Supreme Court held that no part of cause of action arose in Chennai and therefore, the Magistrate concerned had no jurisdiction to deal with the matter. Accordingly, the proceedings were quashed. Also read this judgment to further understand jurisdiction and quash petitions (<http://tinyurl.com/2obp74>).

It is in your interest to understand what a quash petition is about and when to file it.

Don't go rushing blindly to the High Court with a quash petition. Understand the attitude of the High Courts towards quash petitions and take an informed decision.