

21th MAY, 2021

Section 239 vs. 482- Scope under The Code of Criminal Procedure, 1963

The provisions under Section 239 and Section 482 of The Code of Criminal Procedure, 1963 (CrPC) are entirely different in text and approach. Yet, the law relating to discharge of the accused and quashing of criminal proceedings seem to be inter-linked and are being studied together in this article to understand the scope of each section and the remedies available to the accused.

Section 239- Discharge by Magistrate

1. Chapter XIX of CrPC lays down the provisions for trial of warrant cases by Magistrates.

2. Section 239 of CrPC deals with the provision when the accused shall be discharged.

- It provides for consideration of the police report and documents sent with it under section 173 (report of police officer on completion of investigation), by the Magistrate, at the stage of commencement of trial.

- The Magistrate under section 239, also has the power to make necessary examinations and give an opportunity of being heard to the prosecution and the accused.

- If after consideration of all the relevant facts and materials available at this stage, the Magistrate finds/considers that the charge against the accused is groundless, the accused shall be discharged of the accusations/the case.

- The Magistrate must record the reasons for coming to such a conclusion.

3. The term discharge under such section, shall mean discharge in relation to a specific offence and may not bar the Magistrate from commencing trial against such accused in relation to other offences in the same complaint or in another complaint, being the law laid down in Pramatha Nath Mukherjee vs. State of West Bengal AIR 1960 SC 810.

4. R.S. Nayak vs. A.R. Antulay AIR 1986 SC 2045 held that at this stage, it would be a sufficient ground that the charge against the accused has no basis or foundation and the court need not evaluate the materials meticulously or consider the possible defences in the case.

5. However, even a very strong suspicion shall be sufficient for framing of charge and moving ahead with trial- (Naresh Chandra vs. State of UP 1987 SCC OnLine All 326)

6. In TapatiBag vs. Patitapaban Ghosh, the Calcutta High Court held that once charges have been framed, an application for discharge cannot be entertained. Post framing of charges, trial has to proceed against the accused, who may approach the High Court in its revisional jurisdiction.

7. The Rajasthan High Court in Anita Singh vs. State of Rajasthan relied on and accepted the view of the Calcutta High Court and held that after the framing of charges, the accused cannot be discharged, he may either be acquitted or convicted after conclusion of trial.

8. If the accused is not discharged under section 239, the Magistrate then proceeds with trial of the case. Under section 240, if the Magistrate finds that there are enough grounds for presuming commission of an offence, he/she shall frame charges in writing against the accused.

The Calcutta High Court in Somen Bal vs. State of West Bengal held that the stage of discharge under section 239 and framing of charge under section 240 are not stages but refer to a single stage. Thus, if accused is not discharged then charges are framed.

Section 482- Inherent powers of High Court

1. Section 482 of the CrPC upholds the inherent powers of the High Court to make such orders as may be necessary under any of the following circumstances:

- a. To give effect to any order under the Code (CrPC);
- b. To prevent abuse of the process of any court;
- c. To secure the ends of justice.

2. This section does not confer any new powers upon the court, rather just saves the inherent-



Anju Bansal

Senior Associate, MCO Legals
LLB, University of Mumbai

Expertise:

Transaction Documentation,
Corporate, Real Estate

✉ anju.b@mcolegals.co.in



Shivangi Pathak

Research Partner
B.A., LLB (Hons),
Calcutta University

powers of the High Court- (Pankaj Kumar vs. State of Maharashtra (2008) 16 SCC117).

3. In Pampapathy vs. State of Mysore AIR 1967 SC 286, it was held that since no legislative action can provide for all possible cases, it is essential to grant inherent powers to the Courts in addition to the powers conferred through express provisions of law for proper discharge of duties.

4. The judicial precedents have also suggested that the courts in quashing proceedings under section 482 must exercise such jurisdiction very sparingly. Garg Forgings & Castings Ltd. vs. M/s Steel Strips Ltd. held that when the accused has not approached the trial court for quashing of proceedings or for discharge, the High Court must be reluctant to do so.

5. In various decisions, the courts have stressed on the inherent jurisdiction of the high courts under section 482 being similar to/on the same line as its writ jurisdiction under Article 226. In Kapil Agarwal vs. Sanjay Sharma, decided on March 2nd, 2021, the Supreme Court confirmed that inherent powers under Section 482 or Article 226 can be invoked in order to quash an FIR if found to be arbitrary or lodged only to harass the accused as an abuse of the process of law.

6. The scope of section 482 is very wide and this article shall focus on the relation of section 482 with section 239, i.e., the difference between High Court's powers of revision/quashing and the Magistrate's power of discharge.

239 vs. 482- The differences and relation

1. Under section 239, the court cannot rely on any evidence other than the police report. However, under section 482, the court can rely on all available records of the case present at the time when an application under such section is made.

2. In State Anti-Corruption Bureau, Hyderabad vs. P. Suryaprakasam 1999 SCC (Cri) 373, the Court held that at the stage of section 239 the court is only required to consider the police report referred to under Section 173 and the documents sent with it. The accused only has the right of being heard at this stage.

3. The jurisdiction of the High Court under section 482 may be invoked at any stage. However, the High Court must only quash the complaint or charge-sheet in rarest of rare cases. The inherent powers must be read as an exception rather than a rule. (Medchl Chemicals & Pharma Pvt. Ltd. vs. Biological E Ltd. (2000) 3 SCC269)

4. In Madan Mohan Agarwala vs. State of Orissa 1984 SCC OnLine Ori 198 it was clarified that in exercise of the inher-

ent powers the Court can quash the proceedings even at the stage where some of the witnesses have been examined.

5. Hon'ble Supreme Court in Rajesh Bajaj v. State NCT of Delhi 1999 (3) SCC 259 stated that the High Court or the Magistrate under section 482 and 239 respectively, are not supposed to adopt a "strict hyper-technical approach to sieve the complaint through a cullender of finest gauzes for testing the ingredients of offence with which the accused is charged". Such approach may be adopted during trial but not at the initial stage.

6. Section 239 imposes a duty upon the Magistrate to consider the materials on record to ensure that the charges framed against the accused are not baseless or drafted merely to seek revenge from the accused; while section 482 is an option or right granted to the accused to approach the High Court for quashing of the proceedings on the grounds available to him.

7. Section 239 is only applicable to warrant cases, (cases which involve a serious offence punishable with death, life imprisonment or imprisonment exceeding two years) while section 482 does not pre suppose any such bar. Thus, in a summons case, the Magistrate is under no obligation to reach to the conclusion as to the possibility of the charge against the accused being groundless and thus discharging the accused before trial.

8. In K.M. Mathew vs. State of Kerala (1992) 1 SCC 217 the Magistrate had granted discharge to the accused in a summons case in view of the fact that no specific allegation could be made out against him. The Supreme Court upheld this decision with the reasoning that when allegations could not be made out, the Magistrate had no jurisdiction and thus the Magistrate would not need the backing of any specific provision to drop the proceedings.

9. The correct view on this legal position was set out in Adalat Prasad vs. Rooplal Jindal (2004) 7 SCC 338 wherein the three-judge bench held that when the magistrate issues process without any basis, the remedy lies under section 482. Further, the Supreme Court clarified in Dhariwal Tobacco Products Limited vs. State of Maharashtra (2009) 2 SCC 370 that though provision for discharge is not available in a summons case, the accused may invoke dual remedy under sections 482 and 397 (calling for records to exercise powers of revision).

10. An order refusing discharge of an accused under section 239 may be amenable to challenge under section 482 by invoking revisional jurisdiction of the High Court as held in J. Prem vs. State 2000 CrLJ 619 (Mad).