



## QUASHING OF A CRIMINAL PROCEEDINGS IN RESPECT OF NON-COMPOUNDABLE OFFENCES ON THE BASIS OF COMPROMISE.

By *Debasmita Panda & Rucha Bhimanwar*  
From *Symbiosis Law School, Pune*

### INTRODUCTION

The Criminal Procedure Code, 1973 makes a distinction between compoundable and non-compoundable offences, which is elaborated in Section 320 of Code. Compoundable offences are of a less serious nature than non-compoundable. The offences have been classified in accordance with public policy. The offences which are non-compoundable may be compounded if the Supreme Court and High Court exercise their powers under Article 142 of the Constitution of India and Section 482 of Code of Criminal Procedure respectively.

The offences that may lawfully be compounded are those that are mentioned in Section 320 of the Code of Criminal Procedure. The offences other than those mentioned cannot be compounded. The offences punishable laws other than the Penal Code are not compoundable. Only the person named in the third column of Section 320 can legally compound an offence under Section 320 of the Code. Any person may set the criminal law in motion, but it is only the person specified in the third column who can compound the offence. A case may be compared at any time before sentence is pronounced even whilst the Magistrate is writing the judgment.

The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to act as an inducement for his desiring to abstain from a prosecution and Section 320 provides that if the offence be compoundable, composition shall have the effect of an acquittal.

The object of Section 320 of the Code is to promote approachability between the parties so that peace between them is repaired.

One must always keep in mind that there is a subtle difference between the power of compounding of offences given to Court under Section 320 of the Code and quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred upon it under Section 482 of the Code. Once, it is found that compounding is permissible only if a particular offence is covered by the provisions of Section 320 of the Code and the Court in such cases is guided solitary and squarely by the compromise between the parties, in so far as power of quashing under Section 482 of the Code is concerned, it is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment.

Such a distinction is coherently explained by a three Judge Bench of this Court in the case of *ParbatbhaiAahir @ ParbatbhaiBhimsinhbhaiKarmur & Ors. v. State of Gujarat &Anr.*<sup>1</sup>, where the Apex

<sup>1</sup> *ParbatbhaiAahir @ ParbatbhaiBhimsinhbhaiKarmur & Ors. v. State of Gujarat &Anr.*, 2017 Cr.L.R. (SC) 961



Court has given guidelines which is to be kept in the by the High Courts while considering a plea for quashing an FIR or a criminal proceeding under section 482 of the Code of Criminal Procedure on the ground of settlement between the parties.

In this particular case the Appellants had sought quashing of the FIR filed against them on the ground had they had amicably and peacefully settled the dispute among themselves. The complainant had also filed an affidavit to that effect. Hearing the Appeal, the Supreme Court upheld the impugned order, after advertising to various precedents and summarizing broad guidelines. In which it specifically mentioned that “the invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provision of section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.”

These powers whether under Section 320 or under Section 482 of the Code of Criminal Procedure differ in their scope but have been bestowed upon the superior courts to enable them to do complete justice and punish the guilty.

In the case of *Gian Singh v. State of Punjab*<sup>2</sup> subtle distinction between the power of

<sup>2</sup>*Gian Singh v. State of Punjab*, (2012) 10 SCC 303.

compounding of offences given Section 320 of the Code of Criminal Procedure and quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction conferred upon it under Section 482 of the Code was lucidly explained by a three-Judge Bench of the Apex Court<sup>3</sup>. Compounding is permissible only if a particular offence is covered by the provisions of Section 320 of the Code and the Court in such cases is guided solitary and squarely by the compromise between the parties, in so far as power of quashing under Section 482 of the Code is concerned, it is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment.

#### **QUASHING OF NON-COMPOUNDABLE OFFENCE**

However, there are certain offences which predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them cordially, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or First Information Report (FIR)

<sup>3</sup><http://www.thehindu.com/news/national/high-courts-can-quash-prosecution-for-noncompoundable-offences/article3670507.ece>



if it is satisfied that on the face of such settlement

In the case of *Rajiv Saxena and others v. State (NCT of Delhi) and another*<sup>4</sup> the Supreme Court allowed the quashing of criminal case under Sections 498-A and 496 read with Section 34 Indian Penal Code by a brief order. It was observed that since the parties had settled their disputes and the complainant agreed that the criminal proceedings need not be continued, the criminal proceedings could be quashed and set aside.

Now in the case of *Narinder Singh and Ors. v. State of Punjab and Anr*<sup>5</sup> the guidelines were issued to quash the proceedings in cases where the offenses involved are non-compoundable. It was also held that there may be certain cases which are involving heinous crime with element of criminality against the society and not parties inter se. In such cases, the deterrence as purpose of punishment becomes paramount and even if the victim or his relatives have shown the virtue and gentility, agreeing to forgive the culprit, compassion of that private party would not move the court in accepting the same as larger and more important public policy of showing the iron hand of law to the wrongdoers, to reduce the commission of such offences, is more important. Cases of murder, rape, or other sexual offences, etc. would clearly fall in this category. Moreover in 2014 the Supreme Court in *State of Madhya Pradesh v. Madan Lal*<sup>6</sup>

<sup>4</sup>*Rajiv Saxena and others v. State (NCT of Delhi) and another*<sup>4</sup>, (2012) 5 SCC 627.

<sup>5</sup>*Narinder Singh v. State of Punjab*, (2014) 6 SCC 466.

<sup>6</sup>*State of Madhya Pradesh v. Madan Lal*, (2015) 7 SCC 681.

held that no compromise can even be thought of in rape cases. The reasoning provided by the court was: “these are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation..... ... The court could have come to a similar conclusion without stereotyping by simply holding that a compromise can generally not take place in a rape case because it is a serious offence against the body and thus, a compromise would be against public policy.”

Despite these judgment, the Punjab and Haryana High Court in *Dalbir Singh & Ors v. State of Punjab & Ors* on the 15th of September, 2015 quashed an FIR in a rape case on the ground that a compromise had been reached between the parties of the case and the accused had agreed to marry the victim. Allowing a compromise on this ground can prove disastrous for the woman. Moreover, she would be left with no remedy later as marital rape is not criminalised in India.

Now going to the one of the most recent judgement of the Supreme Court which is the case of the *Central Bureau of Investigation v. Sadhu Ram Singla and Ors*<sup>7</sup> where the court after considered the facts and circumstances of the case, and also the law relating to the continuance of criminal cases where the complainant and the Accused had settled their differences and had arrived at an amicable arrangement, there was no reason to differ with the view taken in *Manoj Sharma v. State and Ors*<sup>8</sup>

<sup>7</sup> *Central Bureau of Investigation v. Sadhu Ram Singla and Ors*, (2017) 5 SCC 350

<sup>8</sup> *Manoj Sharma v. State and Ors*, (2008) 16 SCC 1.



and several decisions of the present Court delivered thereafter with respect to the doctrine of judicial restraint. Depending on the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties. The bench though dismissed the appeal, said it would be proper to keep the said point of law open.

Again in the case of *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. v. State of Gujarat & Anr*<sup>9</sup>, the Supreme Court held that heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute.

**CONCLUSION AND RECOMMENDATION**

The High Court and the Supreme Court have rightly been bestowed with extraordinary powers to do complete justice as no written law, however detailed and well intentioned, can account for all situations. But with power comes responsibility. The courts cannot devise straight jacket formulae to decide in what cases the power can be used otherwise a question mark is put on the very justification of giving inherent powers to

enable the courts to give decisions in the interests of justice.

Moreover, such exercise of power by the HCs and SC must be used in appropriate cases, be restrained and must not become a matter of routine. Unfortunately, this is not what is happening, sometimes power is either being used repeatedly and without restraint or the power is being declared to be non-existent.

No doubt, crimes are acts which have harmful effect on the public at large and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime to be only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court.

In my opinion it is not at all justified in doing something indirectly which cannot be done directly. It would not be legitimate exercise of judicial power under Article 226 of the Constitution or under Section 482 Code of Criminal Procedure to direct doing something which Code of Criminal Procedure has expressly prohibited. So I think that it would ordinarily not be a legitimate exercise of judicial power to direct compounding of a non-compoundable offence. The Code makers have obviously thought of something before stating them as non-compoundable offence, so in my opinion it will go totally against the law.

**REFERENCES**

**LINKS/WEBSITES REFERRED:**

<sup>9</sup> *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. v. State of Gujarat & Anr.*, 2017 Cr.L.R. (SC) 961



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