# Gian Singh vs State Of Punjab & Anr on 24 September, 2012

## Equivalent citations: 2012 AIR SCW 5333, 2012 (10) SCC 303, AIR 2012 SC( CRI) 1796, (2012) 4 RECCRIR 543, (2012) 4 BOMCR(CRI) 428, (2012) 9 SCALE 257, 2013 CALCRILR 1 356, (2012) 4 CRIMES 155, (2012) 2 MADLW(CRI) 797, (2013) 4 RAJ LW 3573, (2013) 1 MH LJ (CRI) 417, (2012) 4 CHANDCRIC 37, (2012) 4 CRILR(RAJ) 883, (2012) 4 CURCRIR 115, 2012 CRILR(SC MAH GUJ) 883, (2012) 4 ALL RENTCAS 551, 2012 CRILR(SC&MP) 883, (2012) 5 KANT LJ 476, (2012) 4 KER LJ 141, (2012) 53 OCR 891, (2012) 4 DLT(CRL) 104, 2013 (1) SCC (CRI) 160, 2012 (4) KLT SN 108 (SC)

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## Bench: R.M. Lodha, Anil R. Dave, Sudhansu Jyoti Mukhopadhaya

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO. 8989 OF 2010

Gian Singh …Petitioner

Versus

State of Punjab & Another …Respondents

WITH

SPECIAL LEAVE PETITION (CRL.) NO. 6138 OF 2006

SPECIAL LEAVE PETITION (CRL.) NO. 5203 OF 2011

SPECIAL LEAVE PETITION (CRL.) NO. 259 OF 2011

SPECIAL LEAVE PETITION (CRL.) NO. 5921 OF 2009

SPECIAL LEAVE PETITION (CRL.) NO. 7148 OF 2009

SPECIAL LEAVE PETITION (CRL.) NO. 6324 OF 2009

CRIMINAL APPEAL NOS. 2107-2125 OF 2011

JUDGEMENT

R.M. LODHA, J.

When the special leave petition in Gian Singh v. State of Punjab and another came up for hearing, a two-Judge Bench (Markandey Katju and Gyan Sudha Misra, JJ.) doubted the correctness of the decisions of this Court in B.S. Joshi and others v. State of Haryana and another[1], Nikhil Merchant v. Central Bureau of Investigation and another[2] and Manoj Sharma v. State and others[3] and referred the matter to a larger Bench. The reference order reads as follows :

> "Heard learned counsel for the petitioner.
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> The petitioner has been convicted under Section 420 and Section 120B, IPC by the learned Magistrate. He filed an appeal challenging his conviction before the learned Sessions Judge. While his appeal was pending, he filed an application before the learned Sessions Judge for compounding the offence, which, according to the learned counsel, was directed to be taken up along with the main appeal. Thereafter, the petitioner filed a petition under Section 482, Cr.P.C. for quashing of the FIR on the ground of compounding the offence. That petition under Section 482 Cr.P.C. has been dismissed by the High Court by its impugned order. Hence, this petition has been filed in this Court.
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> Learned counsel for the petitioner has relied on three decisions of this Court, all by two Judge Benches. They are B.S. Joshi vs. State of Haryana (2003) 4 SCC 675; Nikhil Merchant vs. Central Bureau of Investigation and Another (2008) 9 SCC 677; and Manoj Sharma vs. State and Others (2008) 16 SCC 1. In these decisions, this Court has indirectly permitted compounding of non-compoundable offences. One of us, Hon'ble Mr. Justice Markandey Katju, was a member to the last two decisions.
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> Section 320, Cr.P.C. mentions certain offences as compoundable, certain other offences as compoundable with the permission of the Court, and the other offences as non- compoundable vide Section 320(7).
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> Section 420, IPC, one of the counts on which the petitioner has been convicted, no doubt, is a compoundable offence with permission of the Court in view of Section 320, Cr.P.C. but Section 120B IPC, the other count on which the petitioner has been convicted, is a non-compoundable offence. Section 120B (Criminal conspiracy) is a separate offence and since it is a non-compoundable offence, we cannot permit it to be compounded.
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> The Court cannot amend the statute and must maintain judicial restraint in this connection. The Courts should not try to take over the function of the Parliament or executive. It is the legislature alone which can amend Section 320 Cr.P.C.

We are of the opinion that the above three decisions require to be re-considered as, in our opinion, something which cannot be done directly cannot be done indirectly. In our, prima facie, opinion, non-compoundable offences cannot be permitted to be compounded by the Court, whether directly or indirectly. Hence, the above three decisions do not appear to us to be correctly decided.

It is true that in the last two decisions, one of us, Hon'ble Mr. Justice Markandey Katju, was a member but a Judge should always be open to correct his mistakes. We feel that these decisions require re-consideration and hence we direct that this matter be placed before a larger Bench to reconsider the correctness of the aforesaid three decisions.

Let the papers of this case be placed before Hon'ble Chief Justice of India for constituting a larger Bench."

2. This is how these matters have come up for consideration before us.

3. Two provisions of the Code of Criminal Procedure, 1973 (for short, 'Code') which are vital for consideration of the issue referred to the larger Bench are Sections 320 and 482. Section 320 of the Code provides for compounding of certain offences punishable under the Indian Penal Code, 1860 (for short, 'IPC'). It reads as follows :

"S. 320. Compounding of offences.—(1) The offences punishable under the sections of the Indian Penal Code, (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table :

TABLE |Offenc|Section of |Person by whom offence | |e |the Indian |may be compounded | | |Penal Code | | | |applicable | | |1 |2 |3 | (2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:--

TABLE |Offen|Section of |Person by whom | |ce |the Indian |offence may be | | |Penal Code |compounded | | |applicable | | |1 |2 |3 | (3) When an offence is compoundable under this section, the abatement of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under section 34 or 149 of the Indian Penal Code (45 of 1860) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court,

compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section."

4. Section 482 saves the inherent power of the High Court and it reads as follows :

"S. 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 under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

5. In B.S. Joshi1 , the undisputed facts were these : the husband was one of the appellants while the wife was respondent no. 2 in the appeal before this Court. They were married on 21.7.1999 and were living separately since 15.7.2000. An FIR was registered under Sections 498-A/323 and 406, IPC at the instance of the wife on 2.1.2002. When the criminal case registered at the instance of the wife was pending, the dispute between the husband and wife and their family members was settled. It appears that the wife filed an affidavit that her disputes with the husband and the other members of his family had been finally settled and she and her husband had agreed for mutual divorce. Based on the said affidavit, the matter was taken to the High Court by both the parties and they jointly prayed for quashing the criminal proceedings launched against the husband and his family members on the basis of the FIR registered at the wife's instance under Sections 498-A and 406 IPC. The High Court dismissed the petition for quashing the FIR as in its view the offences under Sections 498-A and 406, IPC were non-compoundable and the inherent powers under Section 482 of the Code could not

be invoked to by-pass Section 320 of the Code. It is from this order that the matter reached this Court. This Court held that the High Court in exercise of its inherent powers could quash criminal proceedings or FIR or complaint and Section 320 of the Code did not limit or affect the powers under Section 482 of the Code. The Court in paragraphs 14 and 15 (Pg. 682) of the Report held as under :

> "14. There is no doubt that the object of introducing Chapter XX- A containing Section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.
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> 15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

6. In Nikhil Merchant2, a company, M/s. Neemuch Emballage Ltd., Mumbai was granted financial assistance by Andhra Bank under various facilities. On account of default in repayment of loans, the bank filed a suit for recovery of the amount payable by the borrower company. The bank also filed a complaint against the company, its Managing Director and the officials of Andhra Bank for diverse offences, namely, Section 120-B read with Sections 420, 467, 468, 471 of the IPC read with Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The suit for recovery filed by the bank against the company and the Managing Director of the Company was compromised. The suit was compromised upon the defendants agreeing to pay the amounts due as per the schedule mentioned in the consent terms. Clause 11 of the consent terms read, "agreed that save as aforesaid neither party has any claim against the other and parties do hereby withdraw all the allegations and counter-allegations made against each other". Based on clause 11 of the consent terms, the Managing Director of the Company, the appellant who was accused no. 3 in charge sheet filed by CBI, made application for discharge from the criminal complaint. The said application was rejected by the Special Judge (CBI), Greater Bombay, which came to be challenged before the Bombay High Court. The contention before the High Court was that since the subject matter of the dispute had been settled between the appellant and the bank, it would be unreasonable to continue with the criminal proceedings. The High Court rejected the application for discharge from the criminal cases. It is from this order that the matter reached this Court by way of special leave. The Court having regard to the facts of the case and the earlier decision of this Court in B.S. Joshi1, set aside the order of the High Court and quashed the criminal proceedings by consideration of the matter thus:

"28. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the Company, M/s Neemuch Emballage Ltd., Mumbai, in order to avail of the credit facilities to an extent to which the Company was not entitled. In other words, the main intention of the Company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the Company was not otherwise entitled.

29. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under sub-section (2) of Section 320 CrPC with the leave of the court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S. Joshi case becomes relevant.

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi case and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise."

7. In Manoj Sharma3, the Court was concerned with the question whether an F.I.R. under Sections 420/468/471/34/120-B IPC can be quashed either under Section 482 of the Code or under Article 226 of the Constitution when the accused and the complainant have compromised and settled the matter between themselves. Altamas Kabir, J., who delivered the lead judgment referred to B.S. Joshi1 and the submission made on behalf of the State that B.S. Joshi1 required a second look and held that the Court was not inclined to accept the contention made on behalf of the State that the decision in B.S. Joshi1 required reconsideration, at least not in the facts of the case. It was held that what was decided in B.S. Joshi1 was the power and authority of the High Court to exercise jurisdiction under Section 482 of the Code or under Article 226 of the Constitution to quash offences which were not compoundable. The law stated in B.S. Joshi1 simply indicated the powers of the High Court to quash any criminal proceeding or first information report or complaint whether the offences were compoundable or not. Altamas Kabir, J. further observed, "The ultimate exercise of

discretion under Section 482 CrPC or under Article 226 of the Constitution is with the court which has to exercise such jurisdiction in the facts of each case. It has been explained that the said power is in no way limited by the provisions of Section 320 CrPC. We are unable to disagree with such statement of law. In any event, in this case, we are only required to consider whether the High Court had exercised its jurisdiction under Section 482 CrPC legally and correctly." Then in paragraphs 8 and 9 (pg. 5) of the Report, Altamas Kabir, J., inter alia, held as under :

> "8. .....Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the first information report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case.
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> 9. .....In the facts of this case we are of the view that continuing with the criminal proceedings would be an exercise in futility....."

8. Markandey Katju, J. although concurred with the view of Altamas Kabir, J. that criminal proceedings in that case deserved to be quashed but observed that question may have to be decided in some subsequent decision or decisions (preferably by a larger Bench) as to which non-compoundable cases can be quashed under Section 482 of the Code or Article 226 of the Constitution on the basis that the parties have entered into compromise. In paragraphs 27 and 28 (pg. 10) of the report he held as under:

> "27. There can be no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304- B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 CrPC or in writ jurisdiction on the basis of compromise. However, in some other cases (like those akin to a civil nature), the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn will have to be decided in some later decisions of this Court, preferably by a larger Bench (so as to make it more authoritative). Some guidelines will have to be evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, otherwise there may be conflicting decisions and judicial anarchy. A judicial discretion has to be exercised on some objective guiding principles and criteria, and not on the whims and fancies of individual Judges. Discretion, after all, cannot be the Chancellor's foot.
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> 28. I am expressing this opinion because Shri B.B. Singh, learned counsel for the respondent has rightly expressed his concern that the decision in B.S. Joshi case should not be understood to have meant that Judges can quash any kind of criminal case merely because there has been a compromise between the parties. After all, a crime is an offence against society, and not merely against a private individual."

9. Dr. Abhishek Manu Singhvi, learned senior counsel for the petitioner in SLP(Crl.) No. 6324 of 2009 submitted that the inherent power of the High Court to quash a non-compoundable offence was not circumscribed by any of the provisions of the Code, including Section 320. Section 482 is a declaration of the inherent power pre-existing in the High Court and so long as the exercise of the inherent power falls within the parameters of Section 482, it shall have an overriding effect over any of the provisions of the Code. He, thus, submitted that in exercise of its inherent powers under Section 482, the High Court may permit compounding of a non- compoundable offence provided that in doing so it satisfies the conditions mentioned therein. Learned senior counsel would submit that the power to quash the criminal proceedings under Section 482 of the Code exists even in non-compoundable offence but its actual exercise will depend on facts of a particular case. He submitted that some or all of the following tests may be relevant to decide whether to quash or not to quash the criminal proceedings in a given case; (a) the nature and gravity of case; (b) does the dispute reflect overwhelming and pre-dominantly civil flavour; (c) would the quashing involve settlement of entire or almost the entire dispute; (d) the compromise/settlement between parties and/or other facts and the circumstances render possibility of conviction remote and bleak;

(e) not to quash would cause extreme injustice and would not serve ends of justice and (f) not to quash would result in abuse of process of court.

10. Shri P.P. Rao, learned senior counsel for the petitioner in Special Leave Petition (Crl.) No. 5921 of 2009 submitted that Section 482 of the Code is complete answer to the reference made to the larger Bench. He analysed Section 482 and Section 320 of the Code and submitted that Section 320 did not limit or affect the inherent powers of the High Court. Notwithstanding Section 320, High Court can exercise its inherent power, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. To secure the ends of justice is a wholesome and definite guideline. It requires formation of opinion by High Court on the basis of material on record as to whether the ends of justice would justify quashing of a particular criminal complaint, FIR or a proceeding. When the Court exercises its inherent power under Section 482 in respect of offences which are not compoundable taking into account the fact that the accused and the complainant have settled their differences amicably, it cannot be viewed as permitting compounding of offence which is not compoundable.

11. Mr. P.P. Rao, learned senior counsel submitted that in cases of civil wrongs which also constitute criminal offences, the High Court may pass order under Section 482 once both parties jointly pray for dropping the criminal proceeding initiated by one of them to put an end to the dispute and restore peace between the parties.

12. Mr. V. Giri, learned senior counsel for the respondent (accused) in Special Leave Petition (Crl.) No. 6138 of 2006 submitted that the real question that needs to be considered by this Court in the reference is whether Section 320(9) of the Code creates a bar or limits or affects the inherent powers of the High Court under Section 482 of the Code. It was submitted that Section 320(9) does not create a bar or limit or affect the inherent powers of the High Court in the matter of quashing any criminal proceedings. Relying upon various decisions of this Court, it was submitted that it has been consistently held that the High Court has unfettered powers under Section 482 of the Code to secure

the ends of justice and prevent abuse of the process of the Court. He also submitted that on compromise between the parties, the High Court in exercise of powers under Section 482 can quash the criminal proceedings, more so the matters arising from matrimonial dispute, property dispute, dispute between close relations, partners or business concerns which are predominantly of civil, financial or commercial nature.

13. Learned counsel for the petitioner in Special Leave Petition (Crl.) No. 8989 of 2010 submitted that the court should have positive view to quash the proceedings once the aggrieved party has compromised the matter with the wrong doer. It was submitted that if the court did not allow the quashing of FIR or complaint or criminal case where the parties settled their dispute amicably, it would encourage the parties to speak lie in the court and witnesses would become hostile and the criminal proceeding would not end in conviction. Learned counsel submitted that the court could also consider the two questions (1) can there be partial quashing of the FIR qua accused with whom the complainant/aggrieved party enters into compromise. (2) can the court quash the proceedings in the cases which have not arisen from the matrimonial or civil disputes but the offences are personal in nature like grievous hurt (S.326), attempt to murder (S.307), rape (S.376), trespassing (S.452) and kidnapping (S.364, 365) etc.

14. Mr. P. P. Malhotra, learned Additional Solicitor General referred to the scheme of the Code. He submitted that in any criminal case investigated by police on filing the report under Section 173 of the Code, the Magistrate, after applying his mind to the chargesheet and the documents accompanying the same, if takes cognizance of the offences and summons the accused and/or frames charges and in certain grave and serious offences, commits the accused to be tried by a court of Sessions and the Sessions Court after satisfying itself and after hearing the accused frames charges for the offences alleged to have been committed by him, the Code provides a remedy to accused to challenge the order taking cognizance or of framing charges. Similar situation may follow in a complaint case. Learned Additional Solicitor General submitted that power under Section 482 of the Code cannot be invoked in the non-compoundable offences since Section 320(9) expressly prohibits the compounding of such offences. Quashing of criminal proceedings of the offences which are non-compoundable would negative the effect of the order of framing charges or taking cognizance and therefore quashing would amount to taking away the order of cognizance passed by the Magistrate.

15. Learned Additional Solicitor General would submit that when the Court takes cognizance or frames charges, it is in accordance with the procedure established by law. Once the court takes cognizance or frames charges, the method to challenge such order is by way of appropriate application to the superior court under the provisions of the Code.

16. If power under Section 482 is exercised, in relation to non- compoundable offences, it will amount to what is prohibited by law and such cases cannot be brought within the parameters 'to secure ends of justice'. Any order in violation and breach of statutory provisions, learned Additional Solicitor General would submit, would be a case against the ends of justice. He heavily relied upon a Constitution Bench decision of this Court in Central Bureau of Investigation and others v. Keshub Mahindra and others[4] wherein this Court held, 'no decision by any court, this Court not excluded,

can be read in a manner as to nullify the express provisions of an Act or the Code.' With reference to B.S. Joshi1, learned Additional Solicitor General submitted that that was a case where the dispute was between the husband and wife and the court felt that if the proceedings were not quashed, it would prevent the woman from settling in life and the wife had already filed an affidavit that there were temperamental differences and she was not supporting continuation of criminal proceedings. As regards, Nikhil Merchant2, learned Additional Solicitor General submitted that this Court in State of Madhya Pradesh v. Rameshwar and others[5] held that the said decision was a decision under Article 142 of the Constitution. With regard to Manoj Sharma3, learned Additional Solicitor General referred to the observations made by Markandey Katju, J. in paragraphs 24 and 28 of the Report.

17. Learned Additional Solicitor General submitted that the High Court has no power to quash criminal proceedings in regard to offences in which a cognizance has been taken by the Magistrate merely because there has been settlement between the victim and the offender because the criminal offence is against the society.

18. More than 65 years back, in Emperor v. Khwaja Nazir Ahmed[6], it was observed by the Privy Council that Section 561A (corresponding to Section 482 of the Code) had not given increased powers to the Court which it did not possess before that section was enacted. It was observed, `The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted lest, as their Lordships think, it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Code'.

19. In Khushi Ram v. Hashim and others[7], this Court held as under

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> "It is unnecessary to emphasise that the inherent power of the High Court under Section 561A cannot be invoked in regard to matters which are directly covered by the specific provisions of the Code..."

20. The above view of Privy Council in Khwaja Nazir Ahmed6 and another decision in Lala Jairam Das & Ors. v. Emperor[8] was expressly accepted by this Court in State of Uttar Pradesh. v. Mohammad Naim[9] . The Court said :

> "7. It is now well settled that the section confers no new powers on the High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice. The section provides that those powers which the court inherently possesses shall be preserved lest it be considered that the only powers possessed by the court are those expressly conferred by the Code and that no inherent powers had survived the passing of the Code....."

21. In Pampathy v. State of Mysore[10], a three-Judge Bench of this Court stated as follows :

> " The inherent power of the High Court mentioned in Section 561A, Criminal Procedure Code can be exercised only for either of the three purposes specifically mentioned in the section. The inherent power cannot be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that s. 561A can come into operation....."

22. In State of Karnataka v. L. Muniswamy and others[11], a three- Judge Bench of this Court referred to Section 482 of the Code and in paragraph 7 (pg. 703) of the Report held as under :

> "7. ..... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

23. The Court then observed that the considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the straitjacket of a rigid formula.

24. A three-Judge Bench of this Court in Madhu Limaye v. The State of Maharashtra[12], dealt with the invocation of inherent power under Section 482 for quashing interlocutory order even though revision under Section 397(2) of the Code was prohibited. The Court noticed the principles in relation to the exercise of the inherent power of the High Court as under :

> "(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
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> (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

25. In Raj Kapoor and others v. State and others[13], the Court explained the width and amplitude of the inherent power of the High Court under Section 482 vis-à-vis revisional power under Section 397 as follows:

"10. .....The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In Madhu Limaye's case this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution "would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction".

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain

> of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10) "The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible." I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified."

26. In Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee and another[14], the Court considered the scope of Section 482 of the Code in a case where on dismissal of petition under Section 482, a second petition under Section 482 of the Code was made. The contention before this Court was that the second petition under Section 482 of the Code was not entertainable; the exercise of power under Section 482 on a second petition by the same party on the same ground virtually amounts to review of the earlier order and is contrary to the spirit of Section 362 of the Code and the High Court was in error in having quashed the proceedings by adopting that course. While accepting this argument, this Court held as follows :

> "3. .....The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.
>
> 5. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code.

Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.

7. The inherent jurisdiction of the High Court cannot be invoked to override bar of review under Section 362. It is clearly stated in Sooraj Devi v. Pyare Lal, that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage."

27. In Dharampal & Ors. v. Ramshri (Smt.) and others[15], this Court observed as follows :

> "……It is now well settled that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code……."

28. In Arun Shankar Shukla v. State of Uttar Pradesh and ors.[16] , a two-Judge Bench of this Court held as under :

> "….It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-neigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. The High Court has intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial."

29. In G. Sagar Suri and another v. State of U.P. and others[17], the Court was concerned with the order of the High Court whereby the application under Section 482 of the Code for quashing the

criminal proceedings under Sections 406 and 420 of the IPC pending in the Court of Chief Judicial Magistrate, Ghaziabad was dismissed. In paragraph 8 (pg.

643) of the Report, the Court held as under:

> "8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

30. A three-Judge Bench of this Court in State of Karnataka v. M. Devendrappa and another[18] restated what has been stated in earlier decisions that Section 482 does not confer any new powers on the High Court, it only saves the inherent power which the court possessed before the commencement of the Code. The Court went on to explain the exercise of inherent power by the High Court in paragraph 6 (Pg.94) of the Report as under :

> "6. .....It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent

promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice……..” The Court in paragraph 9 (Pg. 96) further stated :

“9. ……the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage……”

31. In Central Bureau of Investigation v. A. Ravishankar Prasad and others[19], the Court observed in paragraphs 17,19,20 and 39 (Pgs. 356, 357 and 363) of the Report as follows :

“17. Undoubtedly, the High Court possesses inherent powers under Section 482 of the Code of Criminal Procedure. These inherent powers of the High Court are meant to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court.

19. This Court time and again has observed that the extraordinary power under Section 482 CrPC should be exercised sparingly and with great care and caution. The Court would be justified in exercising the power when it is imperative to exercise the power in order to prevent injustice. In order to understand the nature and scope of power under Section 482 CrPC it has become necessary to recapitulate the ratio of the decided cases.

20. Reference to the following cases would reveal that the Courts have consistently taken the view that they must use the court's extraordinary power only to prevent injustice and secure the ends of justice. We have largely inherited the provisions of inherent powers from the English jurisprudence, therefore the principles decided by the English courts would be of relevance for us. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective.

39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the

court or to secure ends of justice."

32 In Devendra and others v. State of Uttar Pradesh and another[20], while dealing with the question whether a pure civil dispute can be subject matter of a criminal proceeding under Sections 420, 467, 468 and 469 IPC, a two-Judge Bench of this Court observed that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence.

33. In Sushil Suri v. Central Bureau of Investigation and another[21], the Court considered the scope and ambit of the inherent jurisdiction of the High Court and made the following observations in para 16 (pg. 715) of the Report:

> "16. Section 482 CrPC itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under CrPC; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 CrPC. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged."

> 34. Besides B.S. Joshi1, Nikhil Merchant2 and Manoj Sharma3, there are other decisions of this Court where the scope of Section 320 vis-à-vis the inherent power of the High Court under Section 482 of the Code has come up for consideration.

> 35. In Madan Mohan Abbot v. State of Punjab[22], in the appeal before this Court which arose from an order of the High Court refusing to quash the FIR against the appellant lodged under Sections 379, 406, 409, 418, 506/34, IPC on account of compromise entered into between the complainant and the accused, in paragraphs 5 and 6 (pg. 584) of the Report, the Court held as under :

> "5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose

> out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has on 11-1-2004 passed away and the possibility of a conviction being recorded has thus to be ruled out.
>
> 6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation.

This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law."

36. In Ishwar Singh v. State of Madhya Pradesh[23], the Court was concerned with a case where the accused – appellant was convicted and sentenced by the Additional Sessions Judge for an offence punishable under Section 307, IPC. The High Court dismissed the appeal from the judgment and conviction. In the appeal, by special leave, the injured – complainant was ordered to be joined as party as it was stated by the counsel for the appellant that mutual compromise has been arrived at between the parties, i.e. accused on the one hand and the complainant – victim on the other hand during the pendency of the proceedings before this Court. It was prayed on behalf of the appellant that the appeal be disposed of on the basis of compromise between the parties. In para 12 (pg. 670) of the Report, the Court observed as follows :

> "12. Now, it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence."

37. The Court also referred to the earlier decisions of this Court in Jetha Ram v. State of Rajasthan[24], Murugesan v. Ganapathy Velar[25], Ishwarlal v. State of M.P.[26] and Mahesh Chand & another v. State of Rajasthan[27] and noted in paragraph 13 (pg. 670) of the Report as follows:

> "13. In Jetha Ram v. State of Rajasthan, Murugesan v. Ganapathy Velar and Ishwarlal v. State of M.P. this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan such offence was ordered to be compounded."

Then, in paragraphs 14 and 15 (pg. 670) the Court held as under :

> "14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind.
>
> 15. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he was not released on bail. Considering the totality of facts and circumstances, in our opinion, the ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused 1) is reduced to the period already undergone."

38. In Rumi Dhar (Smt.) v. State of West Bengal and another[28] , the Court was concerned with applicability of Section 320 of the Code where the accused was being prosecuted for commission of offences under Sections 120-B/420/467/468/471 of the IPC along with the bank officers who were being prosecuted under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal. The accused prayed for her discharge on the grounds (i) having regard to the settlement arrived at between her and the bank, no case for proceeding against her has been made out; (ii) the amount having already been paid and the title deeds having been returned, the criminal proceedings should be dropped on the basis of the settlement and (iii) the dispute between the parties were purely civil in nature and that she had not fabricated any document or cheated the bank in any way whatsoever and charges could not have been framed against her. The CBI contested the application for discharge on the ground that mere repayment to the bank could not exonerate the accused from the criminal proceeding. The two-Judge Bench of this Court referred to Section 320 of the Code and the earlier decisions of this Court in CBI v. Duncans Agro Industries Limited[29], State of Haryana v. Bhajan Lal[30], State of Bihar v. P.P. Sharma[31], Janata Dal v. H.S. Chowdhary[32] and Nikhil Merchant2 which followed the decision in B.S. Joshi1 and then with reference to Article 142 of the Constitution and Section 482 of the Code refused to quash the charge against the accused by holding as under:

> "24. The jurisdiction of the Court under Article 142 of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstances of each case. The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, and this Court, in terms of Article 142 of the Constitution of India, would not direct quashing of a case involving crime

against the society particularly when both the learned Special Judge as also the High Court have found that a prima facie case has been made out against the appellant herein for framing the charge."

39. In Shiji alias Pappu and others vs. Radhika and another[33] this Court considered the exercise of inherent power by the High Court under Section 482 in a matter where the offence was not compoundable as the accused was already involved in commission of the offences punishable under Sections 354 and 394 IPC. The High Court rejected the prayer by holding that the offences with which appellants were charged are not 'personal in nature' to justify quashing the criminal proceedings on the basis of a compromise arrived at between the complainant and the appellants. This Court considered earlier decisions of this Court, the provisions contained in Sections 320 and 394 of the Code and in paragraphs 17, 18 and 19 (pgs. 712 and 713) of the Report held as under:

"17. It is manifest that simply because an offence is not compoundable under Section 320 CrPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 CrPC. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under Section 482 CrPC on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non- compoundable. The inherent powers of the High Court under Section 482 CrPC are not for that purpose controlled by Section 320 CrPC.

18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

19. Coming to the case at hand, we are of the view that the incident in question had its genesis in a dispute relating to the access to the two plots which are adjacent to each other. It was not a case of broad daylight robbery for gain. It was a case which has its origin in the civil dispute between the parties, which dispute has, it appears, been resolved by them. That being so, continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising out of some "misunderstanding and misconception" will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eyewitnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. The continuance of the proceedings is thus nothing but an empty formality. Section 482 CrPC could, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below".

40. In Ashok Sadarangani and Anr. vs. Union of India and others[34], the issue under consideration was whether an offence which was not compoundable under the provisions of the Code could be quashed. That was a case where a criminal case was registered against the accused persons under Sections 120-B, 465, 467, 468 and 471 of IPC. The allegation was that accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening Letters of Credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the Bank to negotiate the Letters of Credit in favour of foreign suppliers and also by misusing the cash credit facility. The Court considered the earlier decisions of this Court including B.S. Joshi1, Nikhil Merchant2, Manoj Sharma3, Shiji alias Pappu33, Duncans Agro Industries Limited29, Rumi Dhar (Smt.)28 and Sushil Suri21 and also referred to the order of reference in one of the cases before us. In paragraphs 17, 18, 19 and 20 of the Report it was held as under:-

"17. Having carefully considered the facts and circumstances of the case, as 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, we see no reason to differ with the views that had been taken in Nikhil Merchant's case or Manoj Sharma's case (supra) or the several decisions that have come thereafter. It is, however, no coincidence that the golden thread which runs through all the decisions cited, indicates that continuance of a criminal proceeding after a compromise has been arrived at between the complainant and the accused, would amount to abuse of the process of court and an exercise in futility, since the trial could be prolonged and ultimately, may conclude in a decision which may be of any consequence to any of the other parties. Even in Sushil Suri's case on which the learned Additional Solicitor General had relied, the learned Judges who decided the said case, took note of the decisions in various other cases, where it had been reiterated that the exercise of inherent powers would depend entirely on the facts and circumstances of each case. In other words, not that there is any restriction on the

power or authority vested in the Supreme Court in exercising powers under Article 142 of the Constitution, but that in exercising such powers the Court has to be circumspect, and has to exercise such power sparingly in the facts of each case. Furthermore, the issue, which has been referred to a larger Bench in Gian Singh's case (supra) in relation to the decisions of this Court in B.S. Joshi's case, Nikhil Merchant's case, as also Manoj Sharma's case, deal with a situation which is different from that of the present case. While in the cases referred to hereinabove, the main question was whether offences which were not compoundable, under Section 320 Cr.P.C. could be quashed under Section 482 Cr.P.C., in Gian Singh's case the Court was of the view that a non-compoundable offence could not be compounded and that the Courts should not try to take over the function of the Parliament or executive. In fact, in none of the cases referred to in Gian Singh's case, did this Court permit compounding of non-compoundable offences. On the other hand, upon taking various factors into consideration, including the futility of continuing with the criminal proceedings, this Court ultimately quashed the same.

18. In addition to the above, even with regard to the decision of this Court in Central Bureau of Investigation v. Ravi Shankar Prasad and Ors. : [(2009) 6 SCC 351], this Court observed that the High Court can exercise power under Section 482 Cr.P.C. to do real and substantial justice and to prevent abuse of the process of Court when exceptional circumstances warranted the exercise of such power. Once the circumstances in a given case were held to be such as to attract the provisions of Article 142 or Articles 32 and 226 of the Constitution, it would be open to the Supreme Court to exercise its extraordinary powers under Article 142 of the Constitution to quash the proceedings, the continuance whereof would only amount to abuse of the process of Court. In the instant case the dispute between the petitioners and the Banks having been compromised, we have to examine whether the continuance of the criminal proceeding could turn out to be an exercise in futility without anything positive being ultimately achieved.

19. As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.

20. In the present case, the fact situation is different from that in Nikhil Merchant's case (supra). While in Nikhil Merchant's case the accused had misrepresented the financial status of the company in question in order to avail of credit facilities to an extent to which the company was not entitled, in the instant case, the allegation is that as part of a larger conspiracy, property acquired on lease from a person who had no title to the leased properties, was offered as collateral security for loans obtained. Apart from the above, the actual owner of the property has filed a criminal complaint

against Shri Kersi V. Mehta who had held himself out as the Attorney of the owner and his family members. The ratio of the decisions in B.S. Joshi's case and in Nikhil Merchant's case or for that matter, even in Manoj Sharma's case, does not help the case of the writ petitioners. In Nikhil Merchant's case, this Court had in the facts of the case observed that the dispute involved had overtures of a civil dispute with criminal facets. This is not so in the instant case, where the emphasis is more on the criminal intent of the Petitioners than on the civil aspect involving the dues of the Bank in respect of which a compromise was worked out." The Court distinguished B.S. Joshi1 and Nikhil Merchant2 by observing that those cases dealt with different fact situation.

41. In Rajiv Saxena and others v. State (NCT of Delhi) and another[35], this Court allowed the quashment of criminal case under Sections 498-A and 496 read with Section 34 IPC 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.

42. In a very recent judgment decided by this Court in the month of July, 2012 in Jayrajsinh Digvijaysinh Rana v. State of Gujarat and another[36], this Court was again concerned with the question of quashment of an FIR alleging offences punishable under Sections 467, 468, 471, 420 and 120-B IPC. The High Court refused to quash the criminal case under Section 482 of the Code. The question for consideration was that inasmuch as all those offences, except Section 420 IPC, were non-compoundable offences under Section 320 of the Code, whether it would be possible to quash the FIR by the High Court under Section 482 of the Code or by this Court under Article 136 of the Constitution of India. The Bench elaborately considered the decision of this Court in Shiji alias Pappu33 and by invoking Article 142 of the Constitution quashed the criminal proceedings. It was held as under:-

"10. In the light of the principles mentioned above, inasmuch as Respondent No. 2 - the Complainant has filed an affidavit highlighting the stand taken by the Appellant (Accused No. 3) during the pendency of the appeal before this Court and the terms of settlement as stated in the said affidavit, by applying the same analogy and in order to do complete justice under Article 142 of the Constitution, we accept the terms of settlement insofar as the Appellant herein (Accused No. 3) is concerned.

11. In view of the same, we quash and set aside the impugned FIR No. 45/2011 registered with Sanand Police Station, Ahmedabad for offences punishable Under Sections 467, 468, 471, 420 and 120-B of IPC insofar as the Appellant (Accused No. 3) is concerned. The appeal is allowed to the extent mentioned above".

43. In Y. Suresh Babu v. State of A. P.[37] decided on April 29, 1987, this Court allowed the compounding of an offence under Section 326 IPC even though such compounding was not permitted by Section 320 of the Code. However, in Ram Lal

and Anr. v. State of J & K[38] , this Court observed that Y. Suresh Babu37 was per incuriam. It was held that an offence which law declares to be non-compoundable cannot be compounded at all even with the permission of the Court.

44. Having surveyed the decisions of this Court which throw light on the question raised before us, two decisions, one given by the Punjab and Haryana High Court and the other by Bombay High Court deserve to be noticed.

45. A five-Judge Bench of the Punjab and Haryana High Court in Kulwinder Singh and others v. State of Punjab and another[39] was called upon to determine, inter alia, the question whether the High Court has the power under Section 482 of the Code to quash the criminal proceedings or allow the compounding of the offences in the cases which have been specified as non-compoundable offences under the provisions of Section 320 of the Code. The five-Judge Bench referred to quite a few decisions of this Court including the decisions in Madhu Limaye12 , Bhajan Lal30 , L. Muniswamy11 , Simrikhia14, B.S. Joshi1 and Ram Lal38 and framed the following guidelines:

"a. Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.

b. Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.

c. Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.

d. Minor offences as under Section 279, IPC may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet another offence which remains non- compoundable is Section 506 (II), IPC, which is punishable with 7 years imprisonment. It is the judicial experience that an offence under Section 506 IPC in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are Sections 147 and 148, IPC, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide M.P. Act No. 17 of 1999 (Section 3) has made Sections 506(II) IPC, 147 IPC and 148, IPC compoundable offences by amending the schedule under Section 320, Cr.P.C.

e. The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted.

Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.

f. That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

While parting with this part, it appears necessary to add that the settlement or compromise must satisfy the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution."

To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice".

It was further held as under :

> “23. No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.
>
> 25. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482.

Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice. The power under Section 482 of the Cr.P.C. is to be exercised ex-debito Justitiae to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.”

46. A three-Judge Bench of the Bombay High Court in Abasaheb Yadav Honmane v. State of Maharashtra[40] dealt with the inherent power of the High Court under Section 482 of the Code vis-à-vis the express bar for compounding of the non-compoundable offences in Section 320(9) of the Code. The High Court referred to various decisions of this Court and also the decisions of the various High Courts and then stated as follows :

> "The power of compounding on one hand and quashing of criminal proceedings in exercise of inherent powers on the other, are incapable of being treated as synonymous or even inter- changeable in law. The conditions precedent and satisfaction of criteria in each of these cases are distinct and different. May be, the only aspect where they have any commonality is the result of exercise of such power in favour of the accused, as acquittal is the end result in both these cases. Both these powers are to be exercised for valid grounds and with some element of objectivity. Particularly, the power of quashing the FIR or criminal proceedings by the Court by taking recourse to inherent powers is expected to be used sparingly and that too without losing sight of impact of such order on the criminal justice delivery system. It may be obligatory upon the Court to strike a balance between the nature of the offence and the need to pass an order in exercise of inherent powers, as the object of criminal law is protection of public by maintenance of law and order."

47. Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under IPC which may be compounded by the parties without permission of the Court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320. When an offence is compoundable under Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable under Section 34 or 149 of the IPC can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The revisional court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner.

48. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.

49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court

or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

51. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

52. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint 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.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer 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 permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and 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 victim and the offender and victim have settled all disputes between them amicably, 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 F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

55. B.S. Joshi1, Nikhil Merchant2, Manoj Sharma3 and Shiji alias Pappu33 do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi1, Nikhil Merchant2, Manoj Sharma3 and Shiji alias Pappu33, this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section

482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.

56. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia14, Dharampal15, Arun Shankar Shukla16, Ishwar Singh23, Rumi Dhar (Smt.).28 and Ashok Sadarangani34. The principle propounded in Simrikhia14 that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In Dharampal15, the Court observed the same thing that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla16. In Ishwar Singh23, the accused was alleged to have committed an offence punishable under Section 307, IPC and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 IPC was not compoundable

offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar (Smt.)28 although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences under Section 120-B/420/467/468/471 of the IPC along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani34 was again a case where the accused persons were charged of having committed offences under Sections 120-B, 465, 467, 468 and 471, IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S. Joshi1, Nikhil Merchant2 and Manoj Sharma3 and it was held that B.S. Joshi1, and Nikhil Merchant2 dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani34 was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani34 supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme

injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

58. In view of the above, it cannot be said that B.S. Joshi1, Nikhil Merchant2 and Manoj Sharma3 were not correctly decided. We answer the reference accordingly. Let these matters be now listed before the concerned Bench(es).

.....J.
(R.M. Lodha)

.....J.
(Anil R. Dave)

.....J. (Sudhansu Jyoti Mukhopadhaya)

NEW DELHI.
SEPTEMBER 24, 2012.

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