

M. Siva Perumal vs S.Kamalanathan on 28 April, 2021

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Author: R. Subbiah

Bench: R. Subbiah, C. Saravanan

Crl.M.P.SR No.63240 of 2019 in

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 04.03.2021

Order Pronounced on : 28-04-2021

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Criminal.M.P.SR No.63240 of 2019
in
Criminal Appeal No. 373 of 2015
--

M. Siva Perumal .. Petitioner/

Versus

S.Kamalanathan .. Respondent/

Criminal Miscellaneous Petition S.R.No.63240 of 2019 in Criminal Appeal No.373 of 2015, filed under Section 482 of the Code of Criminal Procedure Code, 1973, praying to compound the offence under Section 138 of The Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure between the petitioner and the respondent based on a Joint Memo of Compromise dated 12.12.2019 entered into between the petitioner and the respondent and set the respondent/accused at liberty recalling the warrant in Criminal Appeal No.373 of 2015 ordered on

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Crl.M.P.SR No.63240 of 2019

09.04.2019.

For Petitioner : Mr.R.Shanmuga Sundaram, Senior Counsel
for Mr.V.Srinivasa Babu

Mr. Vijay Narayan, Senior Counsel / Advocate General
(assisted the Court)

ORDER

R. SUBBIAH, J This Crl.M.P.S.R.No.63240 of 2019 in Crl.A.No.373 of 2015 is filed under Section 482 of the Code of Criminal Procedure Code, 1973, (for short, Cr.P.C) praying to compound the offence under Section 147 of The Negotiable Instruments Act, (for short, N.I. Act) read with Section 320 Cr.P.C. between the petitioner and the respondent, based on Joint Memo of Compromise, dated 12.12.2019, entered into between the petitioner and the respondent and set the respondent/accused at liberty by recalling the warrant in Criminal Appeal No.373 of 2015 ordered on 09.04.2019.

2.(a). By judgment dated 11.04.2014, the respondent herein was convicted in C.C.No.104 of 2013 by the learned Judicial Magistrate (Fast Track Court), Omalur, (trial Court) for the offence under Section 138 of The Negotiable Instruments Act and sentenced to undergo one year simple imprisonment, together with compensation of Rs.5,00,000/- payable to the complainant.

(b) Assailing the said judgment of conviction, dated 11.04.2014, passed by the trial Court, the respondent (accused) filed Criminal Appeal No.56 of 2014 before the learned II Additional Sessions Judge, Salem. The Appellate Court allowed the appeal on 24.09.2014 by setting aside the judgment of conviction dated 11.04.2014 passed by the trial Court in C.C. No. 104 of 2013, thereby acquitting the respondent/accused.

3. Aggrieved by the judgment rendered by the Appellate Court, acquitting the accused, the complainant filed Criminal Appeal No.373 of 2015 before this High Court. The said Criminal Appeal was allowed by this Court on 09.04.2019. However, the sentence was modified from one year simple imprisonment to two months' simple imprisonment. This Court also confirmed the compensation amount of Rs.5,00,000/- imposed on the respondent/accused by the trial Court. Thus, the Judgment dated 24.09.2014 in Crl.A.No.56 of 2014 of the appellate Court, setting aside the conviction, was reversed and the judgment dated 11.04.2014 passed by the trial Court <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 under Section 138 of The Negotiable Instruments Act, was confirmed.

4. Thereafter, the parties settled the dispute and a Joint Compromise Memo was filed before the Trial court on 04.10.2019 for compounding the offence under Section 147 of The Negotiable Instruments Act. The Joint Compromise Memo was however returned by the learned Judicial Magistrate (FTC), Omalur on 04.10.2019, since the conviction was upheld by the High Court by judgment dated 09.04.2019 in Criminal Appeal No.373 of 2015.

5. Thereafter, on 12.12.2019, a Joint Memo of Compromise entered into between the parties, was filed before this Court in this Criminal.M.P.SR.No. 63240 of 2019 in Crl.A.No.373 of 2015 under

Section 482 Cr.P.C.

6. The Registry of this High Court also returned the said Crl.M.P.S.R. by entertaining a doubt regarding its "maintainability", in view of Section 362 Cr.P.C. Thereafter, the petition was re-presented on 10.01.2020 with the following endorsement:-

"1. This petition is maintainable based on the Honourable Supreme Court Full Bench Judgment reported in Crl.A.No.1852 of 2019 dated 06 December 2019, wherein paragraph No.11.... "Though this Court pointed out in Davinder Pal Singh (supra) that the exceptions carved out in Section 362 of code would apply only to those provisions where <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 the court has been expressly authorised either by the Code or by any other law but not to the inherent power of the Court, this Court nevertheless held that the inherent power of the Court under Section 482 Cr.P.C. is saved where an order has been passed by Criminal Court, which is required to be set aside to secure the ends of justice or where the proceeding amounts to abuse of the process of Court and the Judgment of this Hon'ble Court reported in 2014 (1) MWN (Cr) DCC 161 (MAD), order passed in Crl.O.P.No.14252 of 2019 and Crl.O.P.(MD).No.13999 of 2019 following the Hon'ble Supreme Court Judgment reported in 1990 2 SCC 437 at Para "3". Hence in the view of Judgments of this Hon'ble Court and Judgments of Hon'ble Supreme Court. This petition under 482 is maintainable.

2. In view of "Changed Circumstances" and Section 147 of N.I. Act contemplates non obstante clause. NI Act being a Special Statute the provisions of Section 147 will prevail over Cr.P.C. in so far as "compounding the offence". Requesting the office to post the matter for maintainability before Court."

7. This Crl.M.P.S.R. was posted before the learned Single Judge "for maintainability". The learned Single Judge, after referring to various judgments relating to exercise of powers under Section 147 of the NI Act, as well as Section 482 Cr.P.C., by order dated 24.02.2020, held as follows:-

"23. I may take the liberty to add further, change in circumstances referred in Mostt. Simrikhia case (Mostt.

Simirikhia Vs. Smt.Dolley Mukherjee @ Smt.Chhabimukherjee @ another, (reported in AIR 1990 SC 1605 (cited supra)), is not the change of attitude of the <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 contesting party who come forward to compromise or settle the issue, after he has lost all the avenues provided under law. Right to Compound a case under Section 138 of Negotiable Instrument Act is available for the accused at all stages, but it does not mean that the said opportunity continue even after the case reaches its logical end. Change in circumstances should not be confused or substituted to the change of attitude of the parties. If any alteration in the judgment sought, it can be done only by higher forum and not by the same court, which has passed the Judgment. Section 362

of Cr.P.C. cannot eclipsed or relegated to background by Section 482 of Cr.P.C. for cases arising under Section 138 of Negotiable Instrument Act.

24. The use of the phrase "Change in Circumstances"

to invoke power under Section 482 of Cr.P.C. should not be used improperly. Ordinary circumstantial changes which occur during mundane affairs of human conduct cannot be taken as a change in circumstances to alter or modify the judgment rendered in a criminal case.

25. There are conflicting views and judgments regarding the exercise of inherent power by the High Court under Section 482 of Cr.P.C., to compound offence arising under Negotiable Instrument Act, after disposal of the revision or appeal by the Higher Courts.

26. Hence, I wish to formulate the following point of reference for valuable consideration by a larger bench."

8. Thus, the learned Single Judge, vide order dated 24.02.2020, formulated the point for reference, which reads as follows:

"27. Whether a criminal case initiated under Section 138 of Negotiable Instrument Act, after ending in conviction and reach its logical end, shall it be reopened and <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 compounded under Section 147 of Negotiable Instrument Act by invoking Section 482 of Cr.P.C., overriding the embargo under Section 362 of Cr.P.C."

9. Hence, the matter was placed before the Honourable Chief Justice to constitute a Division Bench and settle the issue so that the Courts below will have clarity regarding application of law in this regard. Accordingly, this case is posted before this Division Bench by the Honourable Chief Justice.

10. The submissions of Mr.R.Shanmuga Sundaram, learned Senior Counsel appearing for the petitioner/complainant, are elaborated hereunder:-

(i) The offence under Section 138 of The Negotiable Instrument Act is only a civil wrong and it is capable of being compounded at any stage by invoking Section 147 of the N.I. Act, even after conviction of the accused or confirmation of conviction by this Court as well as the Supreme Court.

Further, this Court has jurisdiction, authority and power to give effect to such compromise, in order to secure the ends of justice under Section 482 Cr.P.C. To buttress this submission, the learned Senior Counsel placed reliance on the decision of the Supreme Court in the case of Shakuntala Sawhney Vs. Kaushalya Sawhney, reported in 1980 (1) SCC 63, wherein <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 it has been held as follows:

"4. ... The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion. In the present case, Counsel today put in a joint statement (on April 2, 1979 an inchoate compromise purporting to be a full-fledged compromise had been put into Court by Counsel signed by both sides, but the joint statement of settlement put in today is in complete supersession of the earlier one), signed by the parties setting down the terms on which they have agreed. We consider it a success of the finer human spirit over its baser tendency for conflict."

(ii) According to the learned Senior Counsel appearing for the petitioner/complainant, Chapter XVII of the Negotiable Instruments Act was inserted by the Banking Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988) by S.4 therein (with effect from 01.04.1989), dealing with "of penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts", by which Sections 138 to 142 of the N.I. Act, were inserted for providing punishment for "dishonour of cheque". Again, the N.I. Act was further amended by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (55 of 2002) (Section 10), with effect from 06.02.2003, which introduced Section 147 of the NI Act to make the <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 offences under the Negotiable Instruments Act, compoundable. In this regard, the learned Senior Counsel appearing for the petitioner/complainant invited the attention of this Court to the "Statement of Objects and Reasons of the Amendment Act, 2002 of the Negotiable Instruments Act, which reads as follows:

"The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, 1881, namely Sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act."

(iii) Relying on the above said Statement of Objects and Reasons, it is <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 submitted by the learned Senior Counsel appearing for the petitioner/complainant that the Legislative intention behind the insertion of Section 147 of the N.I. Act is to expedite the process under Section 138 of the Act and consequently reduce the burden of the Courts. While determining the scope of compounding the offence under Section 147 of the N.I. Act and the powers of the High Court under Section 482 Cr.P.C., with reference to Section 138 of the N.I. Act, it is fundamental to take into consideration the aforementioned provision(s) with an intention with which it was enacted.

(iv) The learned Senior Counsel appearing for the petitioner/complainant also invited the attention of this Court to Section 320 Cr.P.C., which provides for compounding of the offence(s) with two tables, each under sub-section (1) and (2). The compounding of cases may be entertained for two reasons:

"(i) compounding reduces the wastage of judicial time and makes it available for better use in disposing of the other cases, and

(ii) compounding is encouraged to promote better relations and cordiality between parties and peace in the <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 society and the locality.

(v) In fact, the Supreme Court has allowed compounding of the offence(s) even in non-compounding cases, despite the offence(s) not being covered under the ambit of Section 320 Cr.P.C. In this regard, the learned Senior Counsel appearing for the petitioner/complainant relied on the below mentioned decisions:-

(a) In the case of Kulwinder Singh and others vs. State of Punjab reported in 2007 (3) RCR (Criminal) 1052 = 2007 SCC Online P & H 792, the Full Bench comprising five Judges of the Punjab and Haryana High Court, held that the High Court has power under Section 482 of Cr.P.C. to allow the compounding of non-compoundable offence(s) and quash the prosecution where the High Court felt that the same was required to prevent the abuse of process of any Court or to otherwise secure the ends of justice.

(b) In the case of O.P.Dholkia Vs. State of Haryana and another, reported in 2000 (1) SCC 762, it was held by the Supreme Court that an order of conviction recorded by the Trial Court was upheld by the Appellate Court as well as the Revisional Court and thereafter, a compromise was <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 arrived at between the parties. The Supreme Court, taking into account the nature of offence(s) and that the complainant had compromised the matter, granted permission to compound the offence.

(c) In the case of Nambiram Veetil Pocker Vs. State of Kerala and another, reported in 2003 (9) SCC 214, it was held by the Apex Court that, even though technically, the provisions of Section 320 Cr.P.C. did not apply to the offence(s) not covered under the Indian Penal Code (IPC), the compromise between the parties and payment of the dues under Section 138 of the N.I. Act, was considered as a relevant factor and allowed for compounding of the offence(s).

(d) In the case of Narinder Singh Vs. State of Punjab, reported in 2014 (6) SCC 466, it was observed by the Supreme Court that, the settlement of the parties would lead to better relations between them and would resolve a festering private dispute. The timing of settlement is of significance in determining as to whether the jurisdiction

under Section 482 Cr.P.C. should be exercised.

(e) In the case of Manohar Singh Vs. State of Madhya Pradesh and another, reported in 2014 (13) SCC 75, the Supreme Court accepted a <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 compromise memo submitted by both parties for compounding of the offence under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, and in this decision, the Supreme Court followed/relied on the earlier decision of the Supreme Court reported in 2014 (6) SCC 466 (cited supra) and also the decision of the Supreme Court reported in 2012 (10) SCC 303 (Gian Singh Vs. State of Punjab).

(vi) Further, the learned Senior Counsel appearing for the petitioner/complainant submitted that the High Court has the jurisdiction, authority and power to give effect to the compromise in order to secure the ends of justice, in exercise of the powers under Section 482 Cr.P.C.. The High Court, in exercise of inherent power vested under Section 482 Cr.P.C., shall compound the offence which are traditionally non-compoundable through Section 320 Cr.P.C. In this regard, the learned Senior Counsel appearing for the petitioner/complainant also relied on a judgment of the Apex Court in the case of Arun Singh Vs. State of Uttar Pradesh, reported in 2020 (3) SCC 736, and useful reference can be made to the following observations made by the Supreme Court thereunder:

<http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 "11. Though the offence in question are non-

compoundable but the power of the High Court under Section 482 Cr.PC to quash the proceedings in such offences is well recognised by various decision of this court and the issue is no longer res integra. Reference may be made to the observations of three-Judge Bench of this Court in Gian Singh Vs. State of Punjab : 2012 (10) SCC 303.

'57. Quashing of offences or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of the offence. They are different and not interchangeable. Strictly speaking the power of compounding of offence given to a Court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of the inherent jurisdiction. In compounding of offence, 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 proceedings 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 ultimately consequence may be acquittal or dismissal of indictment.'

12. B.S. Joshi (B.S.Joshi Vs. State of Haryana -

2003 (4) SCC 675), Nikhil Merchant (Nikhil Merchant Vs. CBI - 2008 (9) SCC 677), Manoj Sharma (Manoj Sharma Vs. State - 2008 (16) SCC 1) and Shiji (Shiji Vs. Radhika - 2011 (10) SCC 705) to illustrate the principle that High Court may quash the criminal proceedings or F.I.R. or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or effect the powers of the High Court under Section 482. Can it be said <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 that by quashing criminal proceedings in B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji 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 a High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of the indictment."

(vii) The learned Senior Counsel appearing for the petitioner/complainant also relied on a Judgment of the Apex Court in the case of K.M. Ibrahim Vs. K.P.Mohammed, reported in 2010 (1) SCC 798, and submitted that, in the said case, it has been held that, as far as non-obstante clause included in Section 147 of the N.I. Act is concerned, it being a special Statute, the provisions of Section 147 of the N.I. Act will have an over-riding effect over the provisions of the Cr.P.C. relating to the compounding of offences. The learned Senior Counsel appearing for the petitioner/complaint also placed reliance on the decision of the Supreme Court in the case of Mandvi Co-operative Bank Limited Vs. Nimesh B.Thakore, reported in 2010 (3) SCC 83, wherein, the Apex Court held as <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 follows:-

"25. It is not difficult to see that Sections 142 to 147 lay down a kind of a special code for the trial of offences under Chapter XVII of the Negotiable Instruments Act and Section 143 to 147 were inserted by the Act by the Negotiable Instruments (Amendment and Miscellaneous Provisions) 2002 to do away with all the stages and processes in a regular criminal trial that normally cause inordinate delay in its conclusion and to make the trial procedure as expeditious as possible without in any way compromising on the right of the accused for a fair trial. . . ."

(viii) Further, reliance was also placed on the decision of the Supreme Court in the case of Vinayak Devanna Nayak Vs. Ryot Seva Sahakari Bank Limited, reported in 2008 (2) SCC 305, wherein it was held as follows:-

"16. Section 138 of the Act was inserted by the Banking, Public Financial Institutions and Negotiable Instrument Law (Amendment) Act, 1988 (ACT 66 of 1988) to regulate financial promises in growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters. The incorporation of the provision is designed to safeguard the faith of the creditor in the drawer of the cheque, which is essential to the economic life of a developing country like India. The provision has been introduced with a view to curb cases of issuing cheques indiscriminately by making stringent provisions and safeguarding interest of creditors.

<http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015

17. As observed by this Court in *Electronic Trade & Technology Development Corporation Ltd. V. Indian Technologists & Engineers*, (1996) 2 SCC 739, the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realized this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. (ACT 55 of 2002). The said section reads thus:

"Section 147. Offences to be compoundable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent."

(ix) Thus, by relying on the aforesaid decisions, the learned Senior Counsel appearing for the petitioner/complainant reiterated that Section 147 of the N.I. Act, beginning with a non-obstante clause, will over-ride the <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 provisions of Cr.P.C.. Further, taking into consideration the object of Sections 138 and 147 of the N.I. Act, there cannot be any reason to deny or refuse to record a compromise entered into between the parties to compound the offence under Section 138 of the N.I. Act.

(x) As a next fold of submission, the learned Senior counsel appearing for the petitioner/complainant submitted that the offence under Section 138 of the N.I. Act, is only a civil wrong. The said offence is primarily concerned with private parties and therefore, such an offence cannot be treated on par with the other criminal offence(s). In such offences, the parties are always permitted to enter into a compromise so as to bring an end to the long dispute. To fortify this submission, the learned Senior Counsel appearing for the petitioner/complainant relied on a judgment of the Apex Court in the case of *Damodar S.Prabhu Vs. Sayed Babalal.H*, reported in 2010 (5) SCC 663 = AIR 2010 SC 1107, wherein the Supreme Court framed guidelines with respect to granting permission for compounding of the offence(s) at various stages and the relevant portion of the said judgment reads as follows: (SCC para 21):

"21. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in

Crl.A.No.373 of 2015 urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:

GUIDELINES

i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

<http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

(xi) The learned Senior Counsel appearing for the petitioner/complainant also relied on a judgment of the Apex Court in the case of Meter and Instruments Private Limited and others Vs. Kanchan Mehta, reported in 2018 (1) SCC 560, wherein it has been held in para No.18.2 as follows:-

"18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court."

(xii) Thus, by relying upon the above judgments, the learned Senior Counsel appearing for the petitioner/complainant submitted that the Supreme Court has time and again characterized the offence under Section 138 of the N.I. Act as a "civil wrong", constituting an encroachment of private rights of the parties involved, and therefore, such an offence cannot be treated on par with the criminal offence(s). In such offence(s), the parties <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 are permitted to enter into compromise to bring an end to the dispute. Hence, the compounding of offence under Section 138 of the N.I. Act, through Section 147 of the N.I. Act, can be given effect to, even at a later stage of the proceedings, subject to the parties agreeing to an appropriate compensation.

(xiii) The learned Senior Counsel, by inviting the attention of this Court to the judgment passed in Crl.R.C.No.1096 of 2013, dated 31.01.2020 (Sathish Kumar Vs. Vidhyasagar), reported in CDJ 2020 MHC 2764, submitted that a learned Single Judge of this Court dismissed the Criminal Revision Case (Crl.R.C) filed by the accused in that case and thereby, confirmed the conviction imposed by the trial Court, which was also confirmed by the appellate Court in the appeal at the first instance, but permitted the parties to compound the offence under Section 138 of the N.I. Act, by approaching the trial court/Magistrate under Section 147 of the N.I. Act, despite having already exercised the revisional jurisdiction of this Court. The relevant portion of the said order dated 31.01.2020, reads thus:-

"14.

In the result, this criminal revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused and commit him to prison to serve out the <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 remaining period of sentence. Liberty is given to the parties to approach the trial Court under Section 147, *ibid.*, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid.*, the Magistrate shall send a report to the Assistant Registrar (Crl. Section) of this Court who shall make it form part of the records in Crl.R.C.No.1196 of 2013."

(xiv) Thus, by relying upon the above decision of this Court, the learned Senior Counsel appearing for the petitioner/complainant submitted that, when parties to the offence under Section 138 of the N.I. Act enter into compromise, it should be given effect to under Section 147 of the N.I. Act at any stage of the proceeding, even after conviction being finalised. The failure to give effect to such compromise, will result in the furtherance to the proceedings, which will become infructuous. Such failure would also render the import of Section 147 of the Negotiable Instruments Act meaningless.

(xv) The learned Senior Counsel appearing for the petitioner/complainant also relied on a decision of the Supreme Court in case of K.Subramanian Vs. Rajathi, represented by P.O.A. P.Kaliappan, reported in 2010 (15) SCC 52 and submitted that the Supreme Court, while giving effect to the compromise entered into under Section 147 of the Act, <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 recalled and restored the Special Leave Petition which had been earlier dismissed. The relevant portion of the said Judgment (2010 (15) SCC 52) reads as

follows:-

"9. For the foregoing reasons, Crl.M.P. No. 12801 of 2019 in which prayer to condone the delay for 39 days caused in filing review application is allowed and delay is condoned. The Review Petition succeeds. The Order dated September 11, 2008 dismissing SLP (Crl) No. 6974 of 2008 @ Crl.M.P. No. 14586 of 2008 is recalled. The said SLP is restored on file with its original number. The Crl.M.P. No. 12804 of 2009 in which the prayer is made by petitioner to permit him to produce affidavits sworn by him on December 1, 2008 as well as affidavit sworn by P. Kaliappan, Power of attorney holder of R.Rajathi on December 1, 2008 as additional documents is allowed. Crl.M.P. No. 12803 of 2009 in which the petitioner has prayed to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal Case No. 726 of 2003 under Section 138 of The Negotiable Instruments Act, by learned Judicial Magistrate, Karur is allowed. The petitioner is permitted to compound the offence."

(xvi) Apart from the above decisions, the learned Senior Counsel appearing for the petitioner/complainant produced a catena of orders passed by the various High Courts to fortify his submission that the offence under Section 138 of the N.I. Act can be compounded at any stage.

(xvii) With regard to the issue raised in this petition as to whether <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 Section 362 of Cr.P.C. is a bar to invoke Section 482 Cr.P.C., the learned Senior Counsel appearing for the petitioner/complainant, by relying upon a judgment of the Supreme Court in the case of New India Assurance Company Limited Vs. Krishna Kumar Pandey, reported in 2019 SCC Online SC 1786, in Crl.A.No.1852 of 2019 (arising out of S.L.P.(Crl).No.8499 of 2014), dated 06.12.2019, submitted that in paragraph 11 of the said judgment, it has been held as "11. Section 362 of the Code is expressly subjected to "what is otherwise provided by the Code or by any other law for the time being in force.". Though this Court pointed out in Davinder Pal Singh (supra) (State of Punjab Versus Davinder Pal Singh Bhullar and others - 2011 (14) SCC 770) that the exceptions carved out in Section 362 of the Code would apply only to those provisions where the Court has been expressly authorised either by the Code or by any other law but not to the inherent power of the Court, this Court nevertheless held that the inherent power of the Court under Section 482 Cr.P.C. is saved, where an order has been passed by the criminal Court, which is required to be set aside to secure the ends of justice, or where the proceeding amounts to abuse of the process of Court."

<http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 (xviii) The learned Senior Counsel appearing for the petitioner/complainant also relied on the judgment of the Apex Court in the case of Sanjeev Kapoor Vs. Chandana Kapoor and others in Crl.Appeal No.286 of 2020 (arising out of S.L.P.(Crl).No.1041 of 2020), dated 19.02.2020, reported in 2020 (13) SCC 172, wherein in paragraph No.21, it was observed by the Supreme Court as follows:-

"20. Section 362 Cr.P.C. begins with the word "save as otherwise provided by this Code or by any other law for the time being in force." The above expression clearly means that rigour as contained

in Section 362 Cr.P.C. is relaxed in following two conditions:-

"1. Save as otherwise provided by the Code of Criminal Procedure

2. Any other law for the time being in force."

(xix) Thus, it is submitted by the learned Senior Counsel appearing for the petitioner/complainant that Section 482 Cr.P.C. is not subject to the limitations specified under Section 362 Cr.P.C.. The language employed in Section 362 Cr.P.C. makes it clear that, the provision shall have over-riding effect except where it has been specifically provided otherwise in Cr.P.C. <http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 Section 482 Cr.P.C. is one such exception, which begins with a non-obstante clause. Further, a conjoint reading of the aforementioned provisions will make it clear that Section 482 Cr.P.C. will supersede the effects of Section 362 Cr.P.C. and the latter cannot be cited as a ground for not giving effect to a compromise entered into between the parties after a conviction is finalised through Section 482 Cr.P.C.

(xx) Apart from the above submissions, it is submitted by the learned Senior Counsel appearing for the petitioner/complainant that the Government of India, Ministry of Finance, Department of Financial Services issued a proposal on 08.06.2020 inviting public views with regard to decriminalisation of certain offences, which includes Section 138 of the N.I. Act. Further, the Annexure of the said proposal at page No.15 under Entry No.18 specifies Section 138 of the Act to be considered for decriminalisation. Thus, the intention of the Legislature itself is to consider the offence under Section 138 of the N.I. Act as a less severe offence, ideally resolved by the parties by entering into compromise.

(xxi) The learned Senior Counsel appearing for the petitioner/complainant also submitted that the intention of the parties to <http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 compound the offence under Section 147 of the N.I. Act constitutes a substantial change in circumstances. In this regard, the learned Senior Counsel appearing for the petitioner/complainant invited the attention of this Court to the definition of "circumstances" referred to in Black's Law Dictionary, which reads as follows:-

"Circumstances are minor facts, Pulliam v. State 196 Ga 782, 28 S.E. 2nd 139, 147; related or accessory facts, occurrence or things which stand around, or about, which attend upon, which closely proceeds or follow, which surround and accompany, which depend upon, or which suport or qualify a principal fact or event. Salter v. State, 163 Ga.80, 135 S.E. 408, 409."

(xxii) Thus, the term "circumstance" includes the intention of the parties at the time of institution of the proceedings under Section 138 of the N.I. Act and when the parties agree to compound the offence, there is a substantial alteration in their intention, resulting in a material change in "circumstance", which warrants the intervention of this Court under Section 482 Cr.P.C..

(xxiii) Under Section 482 of the Cr.P.C. this Court has wide and <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 inherent powers to issue any order to secure the ends of justice. In support of this contention, the learned Senior Counsel appearing for the petitioner/complainant relied on a judgment of the Supreme Court in the case of Dinesh Dutt Joshi Vs. The State of Rajasthan and others reported in 2001 (8) SCC 570, in which, it has been held by the Apex Court as follows:-

"6. Section 482 of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is a well- established principle of law that every court has inherent power to act *ex debito justitiae* — to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court. The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

<http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 (xxiv) In this regard, the learned Senior Counsel appearing for the petitioner/complainant also relied on a decision of the Apex Court reported in AIR 2009 SC 1863 = 2009 (13) SCC 443 (State of Andhra Pradesh Vs. Aravapally Venkanna and others), wherein, it has been held as follows:

"4. (As observed in State of A.P. Vs. Goloconda Linga Swamy (2004 (6) SCC 522, pp.526-29 : 2004 SCC (Cri) 1805, paras 5-8):

"5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. 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.

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 such 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 (these) <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015

powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice."

(xxv) Thus, the learned Senior Counsel appearing for the petitioner/complainant submitted that inherent powers under Section 482 Cr.P.C. is available to be exercised by the High Courts for securing the ends of justice. If this Court does not permit compounding of the offence under Section 138 of the N.I. Act through Section 147 of the N.I. Act on the ground that the conviction has reached its end, it would result in grave injustice being committed against the parties, who would be persuaded to continue a proceeding, which neither party intends or would benefit from. Further, if the parties are required to approach the Supreme Court to compound the offence, it will merely have the effect of delaying justice, prolonging what is essentially a concluded case and incurring unwarranted expenses upon the parties. If compounding of an offence under Section 147 of the N.I. Act is subject to procedural restraints, it would discourage the parties from entering into compromise and would operate against the <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 intention of the Legislature to promote mutual settlement of the offence under Section 138 of the N.I. Act. Therefore, Section 362 Cr.P.C. cannot be a bar for exercising the inherent powers under Section 482 Cr.P.C., for securing the ends of justice, by compounding the offence(s) committed under Section 138 of the N.I. Act, even in such cases where the litigation has reached its conclusion. Hence, the learned Senior Counsel appearing for the petitioner/complainant prayed this Court to direct the Registry to number this petition filed under Section 482 Cr.P.C., for compounding the offence committed by the respondent/accused under Section 138 of the N.I. Act through Section 147 of the N.I. Act, even when this case has reached its conclusion to secure the ends of justice.

11.(i) The learned Advocate General, assisting the Court, submitted that this Court enjoys extraordinary jurisdiction under Section 482 of the Cr.P.C. However, such exercise of power under Section 482 Cr.P.C. is always subject to the limitations prescribed under Section 362 Cr.P.C.. No Courts have the power to alter the judgment, after it was pronounced. The application for compounding an offence would amount to setting aside the <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 judgment passed "on merits". While so, it is not permissible to entertain a petition for compounding the offence in exercise of the powers conferred under Section 482 Cr.P.C. after pronouncement of the judgment "on merits".

(ii) With regard to the submission made by the learned Senior counsel for the petitioner that the "Negotiable Instruments Act" is a special enactment and it will over-ride the provisions conferred under the Cr.P.C., the learned Advocate General invited the attention of this Court to Section 4 Cr.P.C. and submitted that it deals with the offences under the Indian Penal Code (IPC) and other laws. Section 5 Cr.P.C. deals with "saving clause", which specifically states that, "Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force". According to the learned Advocate General, the provisions in the Cr.P.C. will prevail. Further, according to the learned Advocate General, a reading of Sections 4 and 5 of Cr.P.C. shows that enquiry, investigation and trial

of an offence, whether under the Indian Penal Code or any other Special Act, procedures under the Cr.P.C. have to be followed, unless any <http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 Special Act provides for the procedures. In this context, the learned Advocate General placed reliance on the decision of the Supreme Court in the case of K.M.Ibrahim Vs. K.P.Mohammed, reported in 2010 (1) SCC 798 to drive home the point that the object of Section 320 Cr.P.C. would not, in strict sense of the term, apply to a proceeding under the Negotiable Instruments Act, 1881, giving the parties to the proceedings an opportunity to compound the offence(s) mentioned in the Table contained in the said Section, with or without the leave of the Court, and also vests the Court with jurisdiction to allow such compromise. Thus, Section 320 Cr.P.C. is not strictly applicable for compounding the offence under Section 138 of the Negotiable Instruments Act, as the same did not consider a case where a petition was filed in the same Court. The Supreme Court exercises its plenary powers under Article 142 of The Constitution of India to render complete justice, which power is not available to the High Court under Section 482 Cr.P.C.

(iii) The learned Advocate General also invited the attention of this Court to the decision of the Supreme Court in the case of Damodar S.Prabhu Vs. Sayed Babalal, reported in 2010 (5) SCC 663, wherein the <http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 Supreme Court, taking into account the difficulties faced in dealing with "cheque bounce cases", had issued guidelines for compounding the offence under Section 138 of the Negotiable Instrument Act. As per the guidelines issued by the Supreme Court, compounding of offence under Section 138 of the Negotiable Instruments Act, is permissible only at the preliminary stage, so as to avoid frivolous litigations and to arrest multitude of proceedings. Thus, the learned Advocate General submitted that offence under Section 138 of the Negotiable Instruments Act cannot be compounded by this Court under Section 482 Cr.P.C. and the proper course for the respondent is to prefer an appeal before the appellate Court, where he can avail such relief.

(iv) The learned Advocate General also contended that an appeal being a creature of statute and the appellate Court would only be considering the correctness of the judgment of the lower court and the appellate Court cannot issue further directions beyond the scope of the appeal. Though the cases may be compounded at any time before a sentence of imprisonment is pronounced, even when a judgment is being written, the Court may hold that, after pronouncement of the judgment, there can be no compounding. However, compounding of cases/offence(s) concerning Negotiable <http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 Instruments Act, are governed by Section 147 of the Negotiable Instruments Act and the scheme contemplated under Section 320 Cr.P.C. will not be applicable in the strict sense, but the principles have to be applied for compounding. Thus, it is the submission of the learned Advocate General that in exercise of power under Section 482 Cr.P.C., the petition for compounding of the offence(s) need not be entertained after the verdict has been delivered in the criminal case.

12. Having heard the learned Senior Counsel appearing for the petitioner/complainant and the learned Advocate General, who assisted this Court in settling this reference, we proceed to decide this case. We have gone through the various decisions cited before us and the order under reference.

13. No doubt, this Court enjoys plenary powers while exercising Section 482 Cr.P.C. The question that has to be examined in this case is as to whether such power can be exercised by entertaining this petition under Section 482 Cr.P.C. for compounding of the offence, after the respondent/accused was convicted by delivering final judgment, in view of the embargo envisaged under Section 362 Cr.P.C.

<http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015

14. In this regard, it is appropriate to refer Section 362 Cr.P.C., which reads as under:-

"Section 362: Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, 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."

15. A reading of Section 362 Cr.P.C. clearly enunciates that no Court has power to alter a judgment, after it was pronounced, more particularly, when the Court is exercising its power under the Criminal Jurisprudence, except to modify the clerical or arithmetic error. In the case on hand, the petitioner/complainant wanted to compound the offence after the conviction by the trial Court, which was upheld by this Court in the Criminal Appeal.

16. A reading of Sections 4 and 5 of Cr.P.C. clearly shows that enquiry, investigation and trial of the offence(s), whether under the Indian Penal Code or any other Special Act, the procedure(s) under the Cr.P.C. have to be followed, unless Special Act provides the procedure(s) to be followed. In this case, for trial of the offence under Section 138 of the Negotiable Instruments Act, except certain specific deviations made under Sections 140, 142 and 143 of the Negotiable Instruments Act, the provisions under the Cr.P.C. have to be followed. The complaint, appeal and revision petitions are to be filed under the provisions of the Cr.P.C. Sub-section (9) of Section 320 Cr.P.C. provides a specific bar for compounding an offence, except where it is otherwise provided. Further, under Section 320 (5), (6), (7) and (9) of Cr.P.C., there is an embargo for compounding an offence once there is conviction. This is the view of the Supreme Court as well. The substantive law settled in the context of the offences under the IPC, is applicable to the offences triable under the N.I. Act and other special Legislations. Though several provisions of the N.I. Act start with a non-obstante clause, nevertheless, substantive law on the subject under Section 320 of the Cr.P.C. is applicable. Section 320 (5), (6), (7) and (9) reads as under:

"Section 320 Cr.P.C : Compounding of offences:--

.. ..

(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 <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 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 Sessions 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.

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

17. Compounding of offences is permissible even at all appellate stages with permission or during the pendency of the revision under Section 401 of the Act. Therefore, not only the offences under the provisions of the Indian Penal Code, but the other offence(s) under the Special Act cannot be compounded, except under Section 320 Cr.P.C..

<http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015

18. Sections 138 to 142 of the Negotiable Instruments Act were inserted by Banking Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, with the object of providing a speedy remedy apart from inculcating faith in the efficacy of Banking operations and credibility in business transactions relating to the Negotiable Instruments. Thus, it is an essential facet for the "economic development" of a country. While so, the expressions 'compromise' and 'compounding' are not synonyms in Criminal Jurisprudence, even though they are usually used without any distinction. Any dispute can be compromised between the parties, if the terms are not illegal, but only a compoundable offence allowed by law can be compounded. A criminal case can be compounded, provided it is a compoundable offence even before a case is registered and the complainant files a complaint. If an offence which is not compoundable under Law is compromised, the Magistrate can ignore the same and proceed with the trial. However, once a Crime is registered and the Court takes cognisance of the case, the offence(s) can be compounded only as provided under Section 320 Cr.P.C. It will have the effect of "acquittal" if it is accepted by the concerned Court. Thus, the offence(s) which are not <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 provided under Section 320 Cr.P.C., cannot be compounded and if it is allowed to be compounded, it will have the effect of "acquittal" by setting aside the conviction and sentence on the basis of the subsequent compromise entered into between the parties. It will be useful to refer to Section 147 of the Negotiable Instruments Act, which reads as under:

"Section 147: Offences to be compoundable:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

19. As mentioned above, though most of the provisions in the N.I. Act, namely Sections 142, 142-A, 143, 143-A, 144, 145, 147 and 148 of the N.I. Act, which make the dishonour of a cheque an offence, start with non- obstante clause, the substantive law for compounding an offence under the general law, cannot be different. Even though Section 147 of the Negotiable Instruments Act starts with a "Non-Obstante Clause" and it provides for compounding of all the offence(s) covered under the Negotiable Instruments Act, the compounding of offence(s) thereunder should be consistent with the <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 principles laid down under Section 320 Cr.P.C. Section 320 (5), (6), (7) and (9) of Cr.P.C. specifically bars the compounding of offence in certain circumstances. The provisions under Section 320 Cr.P.C. are pre-requisites for filing an application for compounding in a proceeding pending before the High Court.

20. It may be useful to refer to paragraph 12 in the decision of the Supreme Court in Damodar S. Prabhu Vs. Sayed Babalal H, reported in 2010 (5) SCC 663, wherein, the Court held as follows:-

12. Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (9) of Section 320 CrPC which states that "No offence shall be compounded except as provided by this section". A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Penal Code also cannot be compounded.

However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) CrPC, especially keeping in mind that Section 147 carries a non obstante clause."

(emphasis supplied by us)

21. The above passage was considered by the Supreme Court in <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 paragraph 52 in JIK Industries Limited and Others Vs. Amarlal V.Jumani and Another, reported in 2012 (3) SCC 255, wherein, it was observed as follows:-

52. The learned counsel further submitted that the impugned judgment of the High Court correctly formulated the principle of compounding by holding that the act of compounding involves an element of mutuality and it has to be bilateral and not unilateral.

However, in paragraphs 68, 78 & 82, it has been ultimately answered by the Supreme Court in the said decision as under:-

68. It is clear from a perusal of the aforesaid Statement of Objects and Reasons that offence under the NI Act, which was previously non-compoundable in view of Section 320 sub-section (9) of the Code has now become compoundable. That does not mean

that the effect of Section 147 is to obliterate all statutory provisions of Section 320 of the Code relating to the mode and manner of compounding of an offence.

Section 147 will only override Section 320(9) of the Code insofar as offence under Section 147 of the NI Act is concerned. This is also the ratio in Damodar [(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] (see para 12). Therefore, the submission of the learned counsel for the appellant to the contrary cannot be accepted.

78. Compounding as codified in Section 320 of the <http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 Code has a historical background. In common law compounding was considered a misdemeanour. In Kenny's Outlines of Criminal Law (19th Edn., 1966) the concept of compounding has been traced as follows:

(p. 407, para 422) “422. Mercy should be shown, not sold.—It is a misdemeanour at common law to ‘compound’ a felony (and perhaps also to compound a misdemeanour); i.e. to bargain, for value, to abstain from prosecuting the offender who has committed a crime. You commit this offence if you promise a thief not to prosecute him if only he will return the goods he stole from you; but you may lawfully take them back if you make no such promise. You may show mercy, but must not sell mercy. This offence of compounding is committed by the bare act of agreement; even though the compounder afterwards breaks his agreement and prosecutes the criminal. And inasmuch as the law permits not merely the person injured by a crime, but also all other members of the community, to prosecute, it is criminal for anyone to make such a composition; even though he suffered no injury and indeed has no concern with the crime.”

82. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of Section 147 in the NI Act, the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence <http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 under the NI Act, in that case the compounding of offence under the NI Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under the NI Act. Therefore, Section 147 of the NI Act must be reasonably construed to mean that as a result of the said section the offences under the NI Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of the NI Act."

(emphasis supplied by us)

22. In our view, there cannot be any quarrel in accepting the submissions of the learned Senior Counsel appearing for the petitioner that the Court can entertain a petition for compounding offence, if it is compoundable or non-compoundable in exercise of the inherent jurisdiction conferred under Section 482 Cr.P.C.. But the question is whether compounding can be permitted after the conviction was/is confirmed by the High Court. In this regard, it is appropriate to refer to Section 482 of Cr.P.C. which reads as follows:-

"Section 482 Cr.P.C.. Saving of inherent powers of High <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 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."

23. No doubt, the powers of this Court under Section 482 Cr.P.C. are very wide and plenitude, but such power requires great caution in its exercise. However, the Court must exercise such powers with due caution based on sound principles. Once a conviction has reached a finality, we are of the view that, if the offence(s) are allowed to be compounded, the same will lead to setting aside the conviction and create a situation acquitting the accused. Such a course is not permissible in view of Section 362 Cr.P.C., unlike that of "Civil Jurisdiction", the question of filing a review or re-call of the judgment of the Criminal Court, does not arise, in view of the bar under Section 362 Cr.P.C. In the absence of any provision for compounding an offence after the pronouncement of the judgment, the application under Section 147 of the Negotiable Instruments Act cannot be maintained. Therefore, the present petition filed under Section 482 Cr.P.C. is not maintainable before this Court for reviewing or recalling a judgment, which was already passed by this Court by confirming the conviction and sentence <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 imposed on the respondent/accused, by the trial Court. Such power under Section 482 Cr.P.C. are boundless. At the same time, exercise of power under Section 482 Cr.P.C. is subject to restrictions imposed under Section 362 Cr.P.C.

24. Applying the above principles to the case on hand, the respondent in this case pleaded not guilty before the trial court, appellate Court at the first instance, as well as this Court in the appeal against acquittal, but such a plea was over-turned and he was convicted for having committed the offence under Section 138 of the Negotiable Instruments Act. While so, the present petition seeking to accept the compromise entered into between the parties, is nothing short of an abuse of process of law.

25. Compounding is permissible to bring peace among the parties. It can be permitted at any stage of the proceeding. A curtain has to be drawn as to the stage where the compounding can be permitted. The learned Senior Counsel appearing for the petitioner/complainant had cited the judgment of this Court delivered in Crl.R.C.No.1096 of 2013, dated 31.01.2020, (Sathish Kumar Vs. Vidhyasagar), reported in CDJ 2020 MHC 2764, and <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 submitted that, in that case, the learned Single Judge, while

confirming the conviction imposed on the accused therein by the trial Court, has given liberty to the accused therein to approach the trial Court to compound the offence under Section 147 of the N.I. Act, even after the accused is taken into custody. Therefore, according to the learned Senior Counsel appearing for the petitioner/complainant, the offence(s) can be compounded even after the conviction is recorded. But, we find that in the said judgement in Crl.R.C.No.1096 of 2013, dated 31.01.2020 (Sathish Kumar Vs. Vidhyasagar), reported in CDJ 2020 MHC 2764, (cited supra), liberty was given by the learned Single Judge at the time of confirming the conviction, and therefore, the said liberty is a part of the final judgment. In the present case, the petitioner/complainant is intending to compound the offence(s) after the judgment is delivered. If a petition for compounding is entertained soon after the judgment in the criminal case is pronounced, it will be a mockery of justice. Such litigants should not be permitted to bring down the majesty of the Court and nullify the judgment passed on "merits". Thus, we hold that it is legally impermissible and rather not intended by the Legislature to permit compounding of the offence after deliverance of the <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 judgment "on merits". In such circumstances, exercise of power under Section 482 Cr.P.C. is not warranted to set at naught the judgment delivered "on merits". If it is permitted, a gullible litigant may wait for his fate to befall on him for acquittal and if the judgment disfavours him, he may immediately engage in a dialogue with the de-facto complainant and file a petition for compounding the offence after the verdict went against him to avoid being incarcerated. As observed above, this would amount to mockery of justice and diluting the judgment delivered on merits. If an accused in criminal trial is capable of settling the dispute with the complainant, after deliverance of the judgment, he should be prudent enough to do so before the verdict is passed. He cannot be allowed to do so after the pronouncement of the judgment. If the relief sought for by the petitioner is entertained, it would amount to re-writing the judgment rendered by this Court while upholding the conviction imposed against the respondent, which would shake the confidence reposed by the litigants in the Court of law. It will also embolden the persons like the respondent/accused to resort to an "out of Court settlement" after he was found guilty by the Court of law.

26. Finally, we wish to observe that the Supreme Court, in number of <http://www.judis.nic.in> Crl.M.P.SR No.63240 of 2019 in Crl.A.No.373 of 2015 cases, interpreted Section 362 of Cr.P.C. and held that, when once the High Court confirms the conviction, thereafter, the High Court has no jurisdiction to entertain to compound the offence(s) and in such case, proper course is to file Special Leave Petition before the Supreme Court, to get appropriate relief as the case may be.

27. Therefore, we answer the issue that when once a Criminal Case registered under Section 138 of the N.I. Act, had handed down the conviction either in the Appeal or in the Revision by the High Court, the question of compounding of the offence(s) thereafter under Section 147 of the N.I. Act by invoking Section 482 Cr.P.C. is not permissible, in view of the embargo envisaged under Section 362 Cr.P.C. The inherent powers of the High Court under Section 482 Cr.P.C., cannot be used to defeat the specific procedure prescribed under the Code and the same cannot be used to over-come the specific bar under Section 362.

28. For the foregoing reasonings, Crl.M.P.SR.No.63240 of 2019 in Crl.A.No.373 of 2015 is rejected.

29. Before parting with the case, we wish to place our appreciation on record for the assistance given by the respective Senior Advocates. <http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 (R.P.S.J.,) (C.S.N.J.,) 28-04-2021 rsh/cs Index:Yes Speaking Order: Yes To

1. The Section Officer, Criminal Section, High Court, Madras.

2. The Public Prosecutor, High Court, Madras.

3. The Advocate General, High Court, Madras.

<http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 R.SUBBIAH, J and C.SARAVANAN, J cs Pre-delivery Judgment in Criminal.M.P.SR No.63240 of 2019 in Criminal Appeal No. 373 of 2015 <http://www.judis.nic.in> CrI.M.P.SR No.63240 of 2019 in CrI.A.No.373 of 2015 Judgment delivered on 28.04.2021 <http://www.judis.nic.in>