Bombay High Court
Jitendra Manohar Dixit And Anr. vs Gopal Babulal Upadyay And Ors. on 16 April, 2001
Equivalent citations: (2002) 104 BOMLR 313
Author: R Batta
Bench: R Batta
JUDGMENT R.K. Batta, J.

1. Rule. With the consent of learned Advocates for the parties, heard forthwith.

2. In this petition filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, the petitioners seek quashing of and setting aside First Information Report and consequently, proceedings in Criminal Case No. 589 of 1999 pending before the Judicial Magistrate, First Class, Nagpur. The case of the petitioners is that their marriage was solemnized on 24.12.1998 and due to the misunderstanding between the petitioners and family members of the petitioners, several cases were filed. According to the petitioners, since the matter is compromised and as the offence under Section 498A of the Indian Penal Code is not compoundable, the extraordinary jurisdiction of this Court is invoked to secure the ends of justice. In Criminal Case No. 589 of 1999 complaint was filed by respondent No. 1 who is brother of petitioner No. 2 for offence under Sections 323, 395, 498A, 506 and 147 read with Section 149 of the Indian Penal Code as also under Section 4 of the Dowry Prohibition Act. Case No. 797 of 99 was filed by respondent No. 2 who is father of petitioner No. 1 for offences under Sections 323, 427, 506 and 147 read with Section 149 of the Indian Penal Code. Besides these criminal cases, the petitioner No. 2 has filed a petition for decree of nullity of marriage which is pending before the Family Court and the matter was compromised and both parties agreed to withdraw the allegations against each other and further agreed to file joint petition under Section 13-B of the Hindu Marriage Act for divorce by mutual consent. The petitioner No. 1 agreed to deposit Rs. 2,50,000/- towards past, present and future maintenance as permanent settlement and has deposited a sum of Rs. 2,21,000/-. The consent terms have been filed by the parties before the Family Court in Petition No. 88 of 1999. It is further alleged that the respondent Nos. 1 and 2 had given undertaking that they will extend co-operation to withdraw the criminal complaint. The offences under Sections 498A and 395 of the Indian Penal Code are not compoundable. Therefore, according to the parties, the matter cannot be finally settled and as such inherent powers should be exercised by this Court, to avoid harassment as also for the good of the society at large. According to them, this would also save valuable and precious time of this Honourable Court.

3. This petition is opposed by the State (respondent No. 3) on the ground that the offence under Sections 498A and 395 of the Indian Penal Code are not compoundable and the petition is liable to be rejected.

4. Learned Advocate for the petitioners, after placing reliance upon number of authorities, submitted that in the circumstances of the case, since the offences under Sections 498A and 395 of the Indian Penal Code are not compoundable and in the absence of compromise the entire settlement between the parties cannot take place, this Court in its inherent jurisdiction should quash the proceedings in Criminal Case No. 598 of 1999 pending before the Chief Judicial Magistrate,

Nagpur. Learned Advocates for respondent Nos. 1 and 2 have adopted the arguments advanced by the learned Advocate for the petitioners. Learned A.P.P. while opposing the petition, has also placed reliance on number of rulings and has urged that the offences being non-compoundable. The question of quashing the proceedings would not arise.

5. The short question for decision is, whether writ jurisdiction or inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code should be pressed into service for quashing the proceedings in cases where the offences are non-compoundable and the parties wish to settle the disputes between them by compromising the same. There is divergence of opinion amongst High Courts on this issue. The High Courts of Punjab and Haryana, Delhi High Court, Orissa High Court and Himachal Pradesh have taken a view that offence under Section 498A of the Indian Penal Code, though not compoundable, under Section 320 of the Criminal Procedure Code, can be allowed to be compounded by exercising inherent powers under Section 482 of the Criminal Procedure Code. On the other hand, the Full Bench of the Andhra Pradesh High Court; Full Bench of the Rajasthan High Court; Division Bench of the Madhya Pradesh High Court; High Court of Karnataka and learned Single Judge of the Bombay High Court, have taken the view that in the case of an offence under Section 498A of the Indian Penal Code which is non-compoundable under Section 320 of the Criminal Procedure Code, inherent powers cannot be exercised either to permit compromise or to quash proceedings on that count. Learned Advocate for the petitioners has taken the former view and the learned A.P.P. has pressed before me the later view.

6. I shall first deal with the view which is pressed into service by learned Advocate for the petitioners. Though the learned Advocate for the petitioners had placed reliance on the Division Bench judgment of the Andhra Pradesh High Court in Smt. Daggupati Jayalakshmi v. State 1993 Cri.L.J. 3162 : 1993 (3) All Cri.L.R. 317, yet the view taken therein has been held by the learned Single Judge of the Andhra Pradesh High Court in Annaamdevula Srinivasa Rao and Anr. v. State of A.P. and Ors. 1995 Cri.L.J. 3964, as view taken per incuriam. Subsequently, the Full Bench of the Andhra Pradesh High Court in Smt. Ghousia Sultana @ Ghousia Begum and etc. etc. v. Mohd. Ghouse Baig and Ors. 1996 Cri.L.J. 2973, has overruled the view taken by the Division Bench and has endorsed the view taken by the learned Single Judge. I shall discuss these authorities while discussing the other view put up before me by the learned A.P.P.

7. In Mohindeer Singh Khosla and Ors. v. State of Union Territory of Chandigarh and Ors. 1996 Cri.L.J. 1247 : 1992 All. L.J. 464, while dealing with the criminal case wherein offences under Sections 365, 384, 342 and 506 read with Section 34 of the Indian Penal Code were disclosed, it was found that the offences mentioned in the First Information Report were not compoundable, but the parties amicably settled their disputes and differences and in the interest of justice, exercising powers under Section 482 of the Criminal Procedure Code, the First Information Report was quashed. In this case it was pointed out that in Y. Suresh Babu v. State of A.P. 1987 (2) J.T. 361, an offence under Section 326 of the Indian Penal Code, which is non-compoundable, was allowed to be compounded by Their Lordships of the Supreme Court and similarly, in Mahesh Chand v. State of Rajasthan AIR 1988 SC 2111 : 1989 (1) J.T. 618 : 1989 Cr.L.J. 121. Their Lordships permitted the parties to compound the offence under Section 397 of the Indian Penal Code. However, it may be pointed out that the Apex Court in Ram Lal and Anr. v. State of J. & K. , has held that the judgments

in Mahesh Chand v. State of Rajasthan (supra) and Suresh Babu v. State of A.P. (supra) were decisions rendered per incuriam. It was pointed out by the Apex Court that Section 320 provides two tables, one compoundable and the other compoundable with the permission of the Court and only such offences as are included in the two Tables can be compounded and none else. The Apex Court also pointed out that Sub-section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban in the following terms:

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

The judgment of the Apex Court in Ram Lal and Anr. v. State of J. & K. (supra) was followed in Surendranath Mohanty and Anr. v. State of Orissa , wherein it was held that an offence under Section 326 of the Indian Penal Code is non-compoundable and compounding of the same is not permissible. Therefore, the basis of the judgment of the Punjab and Haryana High Court, wherein reliance was placed on the judgments in the case of Suresh Babu v. State of A.P. (supra) and Mahesh Chand v. State (supra) which have been held to be per incuriam in Ram Lal and Anr. v. State of J. & K. (supra) is shaken.

8. Learned Advocate for the petitioners has then placed reliance on the judgment of the Delhi High Court in Chain Sukh and Ors. v. State and Ors. (1999) C.C.R. 265, wherein the Delhi High Court was dealing with a criminal case under Sections 452, 323 and 506 read with Section 34 of the Indian Penal Code. Relying upon Smt. Daggupati Jayalakshmi v. The State (supra) and Mahesh Chand and Anr. v. State of Rajasthan (supra), the First Information Report was quashed in exercise of the power under Section 482 of the Criminal Procedure Code. The Judgment in Smt. Daggupati Jayalakshmi v. State (supra) as I have already pointed out has been held to be rendered per incuriam by the learned Single Judge of the same High Court in Annamdevula Srinivasa Rao and Anr. v. State of A.P. (supra), and subsequent thereto, the Full Bench of the Andhra Pradesh High Court has overruled the view taken in Daggupati Jayalakshmi v. State (supra) and the Full Bench has endorsed the view taken by the learned Single Judge in Annamdevula Srinivasa Rao and Anr. v. State of A.P. Therefore, even this ruling of the Delhi High Court cannot help the petitioners. The ruling in Mahesh Chand and Anr. v. State of Rajasthan (supra) has been held to be rendered per incuriam by the Apex Court in Randal v. State of J. & K. (supra).

9. Reliance was placed on another judgment of Delhi High Court in Saleemuddin and Ors. v. State and Ors. (2000) 1 D.M.C. 693. In this case, the Court was dealing with the criminal complaint under Sections 498A and 406 of the Indian Penal Code. It was held that to ensure larger happiness by allowing settlement between the parties specially where the parties have started living together or the divorce has taken place to enable them to settle down in life all-out effort has to be made by each one of us to contain this ever spreading fear psychosis leading to tension and consequential strange relations. In this case the judgment of the Apex Court in Ramlal and Anr. v. State of Jammu and Kashmir (supra) as also Sub-section (9) of Section 320 of the Criminal Procedure Code has been considered besides rulings on the point of exercise of inherent power in Amar Nath v. State of Haryana , V.C. Shukla v. State , and Krishnan and Anr. v. Krishnaveni and Anr. ; Nevertheless, some of the other judgments of the Apex Court on the point of exercise of power under Section 482 of the Criminal Procedure Code, have not been considered in this judgment, to which I shall make

reference at a later stage and I am not able to subscribe to the view taken by learned Judge.

10. The last judgment on which reliance is placed by the learned Advocate for the petitioners is, Subhash Chandra Mishra v. Republic of India and Anr. 2001 Cri.L.J. 876, wherein the Court was dealing with the criminal offences under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. In this case, divorce petition was pending before the Family Court and affidavit was filed that there was no chance of reunion and parties wanted to live separately without proceeding with the criminal case and the parties had settled their differences and had arrived at compromise. The proceedings in this case were quashed in order to achieve social justice and harmony. However, the matter has not been dealt with threadbare with reference to the law and rulings on this subject.

11. At this stage, I shall also refer to three unreported judgments of this Court upon which reliance was placed by learned Advocate for the petitioner. The said judgments are Sudhir Dattatraya Kulkarni and Ors. v. State of Maharashtra and Ors. Criminal Application No. 386 of 2000; Sanjay Shantaram Awade v. State of Maharashtra and Ors. Criminal Application No. 628 of 2000, and Suresh Kashinath Dhadhod and Ors. v. State of Maharashtra and Anr. Criminal No. 1365 of 2000, wherein the offence under Section 498A of the Indian Penal Code was allowed to be compounded in view of the settlement between the parties, but in none of these cases, there has been discussion on law or on the question of exercise of inherent powers under Section 482 of the Criminal Procedure Code. In fact, in Suresh Kashinath Dhadhod and Ors. v. State of Maharashtra and Anr. (supra), learned A.P.P. had stated that the State had no objection if the matter is allowed to be compounded. As against these rulings, there is judgment of the learned Single Judge of this Court in Smt. Neeta Sanjay Tadage v. Smt. Vimal Sadashiv Tadage and Ors. 1997 Cri.L.J. 3263, wherein all relevant aspects have been considered and the view taken by the learned Single Judge is that offence under Section 498A of the Indian Penal Code is non-compoundable; Sub-section (9) of Section 320 of the Criminal Procedure Code clearly provides that no offence shall be compounded except as provided by that section; compounding of offence which is non-compoundable cannot be accomplished by invoking writ jurisdiction of the High Court on inherent powers under Section 482 of the Criminal Procedure Code. In this case, judgment in Nathmal Rathi v. State of Maharashtra 1992 Cri.L.J. 2106, of this Court has been held to be per incuriam in the light of the view which I am going to take, the judgments of the learned Single Judges in Suresh Kashinath Dhadhod and Ors. v. State of Maharashtra and Anr.; Sanjay Shantaram Awade v. State of Maharashtra and Ors. and Sudhir Dattatraya Kulkarni and Ors. v. State of Maharashtra and Ors. (supra) are per incuriam. The learned Single Judge of this Court in Smt. Neeta Sanjay Tadage v. Smt. Vimal Sadashiv Tadage and Ors. (supra) relied upon the judgment of the learned Single Judge of the Andhra Pradesh High Court in Annamdevula Srinivasa Rao v. State of Andhra Pradesh (supra) which has been approved by the Full Bench of the Andhra Pradesh High Court in Smt. Ghousia Sultana alias Ghousia Begum and. etc. etc. v. Mohd. Ghouse Baig and Ors. etc. (supra) and which has overruled the Division Bench judgment of the said High Court in Smt. Daggupati Jayalakshmi v. State (supra). The learned Single Judge of this Court has, after placing reliance on Madhu Limaye v. State of Maharashtra , and concurring fully with the view taken by the learned Single Judge of the Andhra Pradesh High Court in Annamdevula Srinivasa Rao v. State of Andhra Pradesh (supra), as also the expression "any other purpose" occurring in Section 482 of the Criminal Procedure Code, thereby meaning "enforcement

of any legal right and performance of any legal duty" has come to the conclusion that offence under Section 498A of the Indian Penal Code being non-compoundable, compounding of the same cannot be permitted either by invoking writ jurisdiction of the High Court or in exercise of inherent powers under Section 482 of the Criminal Procedure Code. What cannot be done directly, cannot be obviously be permitted to be done indirectly and if the offences are not compoundable and the parties wish to compound the same, the desired result cannot be allowed to be achieved by seeking quashing of proceedings on that ground.

12. Be that as it may, I shall now proceed to discuss the other judgments which take the latter view. I shall first deal with the view taken by the Andhra Pradesh High Court. In Smt. Daggupati Jayalakshmi v. State (supra), the Division Bench of the Andhra Pradesh High Court had laid down that the High Court in exceptional circumstances can permit compounding of non-compoundable offences under its inherent powers under Section 482 of the Criminal Procedure Code. It was pointed out that sympathy cannot be a ground for applying the inherent powers vested in the High Court under Section 482 of the Criminal Procedure Code, and sympathy has no place to outweigh the powers given under a particular statute. This judgment of the Division Bench of the Andhra Pradesh High Court came up before the learned Single Judge of the same High Court in Annamdevula Srinivasa Rao v. State of Andhra Pradesh (supra). In this matter, directions were sought from the Court in various matters relating to non-compoundable offences such as, Section 138 of the Negotiable Instruments Act, Section 498A of the Indian Penal Code, Sections 307 and 452 of the Indian Penal Code. After elaborate discussion and taking into consideration the rulings of the Apex Court on the question of exercise of inherent powers under Section 482 of the Criminal Procedure Code, as also the provisions of Section 320(9) of the Criminal Procedure Code as also the judgments of the other High Courts and the Division Bench judgment in Smt. Daggupati Jayaiakshrni v. State (supra), it was held that the said judgment of the Division Bench even with regard to its applicability to the offence under Section 498A of the Indian Penal Code is given per incuriam. In this judgment, the learned Single Judge has referred to two Tables under Section 320 of the Criminal Procedure Code and Sub-section (9) of Section 320 of the Criminal Procedure Code on the question of exercise of inherent powers. Reliance is placed on the judgment of Madhu Limaye v. State of Maharashtra (supra) wherein the Apex Court has held:

The High Court possessed and possess the inherent powers to be exercised ex debito justitiae to do the real and the substantial justice for the administration of which alone Courts exist.

The Apex Court, while laying down the parameters of the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure said (para 8 of Cri.L.J.):

At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions:

(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;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court 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.

Then reference is made to Mosst. Simrikhia v. Dolley Mukherjee , and Sooraj Devi v. Pyarelal , and the following observations from there have been quoted:

In Mosst. Simrikhia v. Dolley Mukherjee AIR 1990 SC 1605 : 1990 Cri.L.J. 1599, while considering whether the High Court is empowered to review its own decision under the purported inherent power, the Supreme Court held (paras 2, and 4 of Cri.L.J.):

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.

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If a matter is covered by an express letter of law, the Court cannot give a go-by to the

While saying so, the Supreme Court referred to its earlier decision in Sooraj Devi v. Py
Now It is well settled that the inherent power of the Court cannot be exercised for doi

13. The learned Single Judge of the Andhra Pradesh High Court has quoted Constitutional Bench decision of the Apex Court in Union Carbide Corporation v. Union of India , on which reliance was placed by the learned Senior Counsel therein and it was submitted that the matter is now authoritatively decided by the Supreme Court that the Court, in exercise of its inherent jurisdiction cannot direct compounding of offences which are otherwise non-compoundable under the Code and it was pointed out that the compounding would run in the teeth of the statutory prohibition contained in Section 320(9) of the Code of Criminal Procedure. The Apex Court while dealing with this submission, held that the order terminating the pending criminal proceedings is not supportable on the strict terms of Sections 320 or 321 or 482 of the Criminal Procedure Code. However, the case was decided under the plenary jurisdiction under Article 142 of the Constitution of India by the Apex Court. The learned Single Judge then referred to the judgments of the Apex Court in Dharampal v. Ramshri , and Ganesh Narayan Hegde v. S. Bangarappa (1995) 2 All Cri.L.R. 211, and has quoted the following observations therefrom:

17. Shri Padmanabha Reddy, learned Senior Counsel refers to a decision of the Supreme Court in Dharampal v. Ramshri . The Supreme Court in the said case was concerned with a question to whether the High Court could have invoked Its jurisdiction under Section 482 of the Code in entertaining a second revision application which is expressly barred by Section 397(3) of the Code in

the said context, the Supreme Court held (para 4):

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

18. In Ganesh Narayan Hegde v. S. Bangarappa (1995) 2 All Cri.L.R. 211, while dealing with the power of the High Court under Section 482 of the Code. No doubt the Supreme Court held:

While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as second Revisional Court under the garb of exercising inherent powers.

The learned Single Judge then posed a question "Can the High Court in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code, convert a non-bailable offence into a bailable offence or vice versa? Can the High Court in exercise of its powers under Section 482 of the Criminal Procedure Code make a non-cognizable offence as a cognizable offence or otherwise?" According to the learned Single Judge, the answer is an emphatic No. The learned Single Judge further observed that likewise, the High Court, in exercise of its inherent jurisdiction under Section 482 of the Code cannot command the subordinate Criminal Courts to permit the parties to compound an offence which is not otherwise compoundable. It was then pointed out that the Parliament, in its wisdom, though that only certain offences specified under Section 320 of the Code alone can be compounded and no other offences. It was further pointed out that variety of factors must have been taken into consideration by the Parliament in limiting the offences which can be compounded and it is a matter of social policy concerning social order.

14. The learned Single Judge of the Andhra Pradesh High Court then dealt with the Division Bench judgment in Smt. Daggupati Jayalakshmi v. State (supra), and quoted the following paragraph from the Division Bench judgment:

We are still of the firm view that in the case of non-compoundable offences in general the High Court has no power to permit the parties to compound the same. Sympathy towards the accused shown in special set of circumstances is different from applying the provisions of the Act. Sympathy cannot be a ground for applying the inherent powers vested in the High Court under Section 482 of the Criminal Procedure Code. It should be exercised in exceptional cases only to prevent the abuse of the process of the Court or to meet the ends of justice. Sympathy has no place to outweigh the powers given under a particular statute.

The learned Single Judge further quoted from the said Division Bench judgment wherein it was stated that the Division Bench had not laid down the general proposition that the Court is competent to permit the parties in all the cases to compound a non-compoundable offence, therefore, the learned Single Judge came to the conclusion that the Division Bench never expressed any opinion as to whether any non-compoundable offence except the offence under Section 498A of the Indian Penal Code can be permitted to be compounded by the High Court in the exercise of

powers under Section 482 of the Criminal Procedure Code. The learned Single Judge found that in the entire judgment, there was no reference about Section 320(9) of the Code which is mandatory in its nature, containing legislative command to the effect that no other offence except the offence stated under Section 320 of the Criminal Procedure Code can be compounded. The learned Single Judge, therefore, held that the judgment of the Division Bench was rendered per incuriam.

15. The Full Bench of the Andhra Pradesh High Court in Smt. Ghousia Sultana alias Ghousia Begum and etc. etc. v. Mohd. Ghouse Baig and Ors. etc. (supra), subsequently overruled the Division Bench judgment in Smt. Daggupati Jayalakshmi v. State (supra) and followed the judgment of the learned Single Judge in Annamdevula Srinivasa Rao v. State of Andhra Pradesh (supra). The Full Bench noticed the law laid down in Madhu Limaye v. State of Maharashtra (supra) by the Apex Court in relation to the inherent powers of the High Court under Section 482 of the Criminal Procedure Code, as also other judgments and came to the conclusion that the compounding of non-compoundable offences cannot be allowed or directed to be compounded by the High Court in the exercise of its inherent powers. However, it was pointed out that in appropriate cases steps may be taken for withdrawal of prosecution in accordance with Section 321 of the Criminal Procedure Code.

16. The Full Bench of the Rajas than High Court in Mohan Singh and Ors. v. State 1993 Cri.L.J. 3193 : 1993 (3) All Cr.L.R. 197 : 1993 (1) Cur. Cr.R. 608, has also exhaustively dealt with the issue in question with reference to the inherent powers of the High Court under Section 482 of the Criminal Procedure Code after relying upon a number of judgments of the Apex Court on the scope of exercise of inherent powers under Section 482 of the Criminal Procedure Code, including Palaniappa Gounder v. State of Tamil Nadu AIR 1977 SC 1332 : 1977 (3) S.C.R. 132 : 1977 (2) SCC 632 : 1977 U.J. 339 : 1977 Cr.L.J. 1992, wherein it is laid down as under:

A provision which saves the inherent powers of a Court cannot override any express provision contained in the statute which saves that power. This is put in another form by saying that if there is an express provision in a statute governing a particular subject matter there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly that it will be clear that the application made by the heirs of the deceased for compensation could not have been made under Section 482 since Section 357 expressly confers power on the Court to pass an order for payment of compensation in the circumstances mentioned therein.

The Full Bench of the Rajasthan also relied upon the observations in Madhu Limaye v. State of Maharashtra (supra)(relevant observations of this case have already been quoted above) and in paragraph 12 of the judgment, the Full Bench has referred to the judgments of the Apex Court in Sooraj Devi v. Pyarelal and quoted the observations of the Apex Court in Mosst. Simrikhia v. Smt. Dolley Mukherjee , which portion of paragraph 12 is reproduced below:

The inherent powers, however, as such 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.

It was then observed:

inherent power under Section 482 of the Criminal Procedure Code 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.

It has been laid down by the Full Bench of the Rajasthan High Court as under:

(i) That the High Court possesses the inherent power to be exercised "ex debito justitiae" to do the real and substantial justice for the administration of which alone Court exists. But, such powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice;

(ii) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(iii) 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; and

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

Applying the aforesaid principles, the Rajasthan High Court held that in view of the express bar contained in Sub-section (9) of Section 320 of the Criminal Procedure Code, the High Court cannot, in the exercise of its inherent powers under Section 482 of the Criminal Procedure Code, permit composition of offence which is not compoundable under Sub-section (1) or Sub-section (2) of Section 320 of the Criminal Procedure Code.

17. The Division Bench of the Madhya Pradesh High Court in Deepak Dawar and Ors. v. State of M.P. and Ors. 2000 Cri.L.J. 2874, while dealing with the criminal case under Sections 406 and 498A of the Indian Penal Code and after noticing the divergence of views on the subject, held that compounding a non-compoundable offence or quashing a criminal prosecution as a result of compromise between the parties by the High Court under Section 482 of the Criminal Procedure Code is not permissible since such a compromise is expressly barred under Sub-section (9) of Section 320 of the Criminal Procedure Code.

18. The learned Advocate for the applicants relied upon the judgment of the Apex Court in Krishnan and Anr. v. Krishnaveni and Anr. (supra). In this case, after considering Sub-section (3) of Section 397 of the Criminal Procedure Code, as also suo motu. powers under Section 401 of the Criminal Procedure Code has laid down that in spite of bar contained in Sub-section (3) of Section 397 of the Criminal Procedure Code, inherent power of the High Court is still available under Section 482 of the Criminal Procedure Code. The question before the Apex Court was, whether the High Court has power to entertain revision under Section 397(1) of the Criminal Procedure Code in respect of which the Sessions Judge had already exercised revisional power and whether under the circumstances of the case, it could be considered to be one under Section 482 of the Criminal Procedure Code. The

Apex Court has laid down the object of Section 397(3) is to put a bar on simultaneous revisional applications to the High Court and the Court of Sessions so as to prevent unnecessary delay and multiplicity of proceedings. However, it was pointed out that by implication, the State stands excluded from the purview of the word "person" for the purpose of limiting its rights to avail the revisional power of the High Court under Section 397(1) of the Criminal Procedure Code for the reason that the State, being the prosecutor of the offenders, is enjoined to conduct prosecution and to take such remedy and steps as it deems proper. Accordingly, it was held that the prohibition under Section 397(3) of the Criminal Procedure Code on revisional power given to the High Court would not apply when the State seeks revision under Section 401 of the Criminal Procedure Code. Therefore, the State is not prohibited to avail the revisional power of the High Court under Section 397(1) read with Section 401 of the Criminal Procedure Code. The Apex Court then laid down that ordinarily when revision has been barred by Section 397(3) of the Criminal Procedure Code, a person/accused/complainant cannot be allowed to take recourse to revision to the High Court under Section 397(1) of the Criminal Procedure Code or under inherent powers of the High Court under Section 482 of the Criminal Procedure Code since it may amount to circumvention of the provisions of Section 397(3) of the Criminal Procedure Code or Section 397(2) of the Code. Nevertheless, the Apex Court has pointed out that Section 397 of the Code gives power to the High Court to call for records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein. It has been further laid down that the revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that Its subordinate Courts do not exceed the jurisdiction or abuse, the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice. Therefore, the conclusion arrived at by the Apex Court in this judgment is based upon the reasoning that even in spite of the bar under Section 397(3) of the Code, the State can approach the High Court for revision under Section 401 of the Criminal Procedure Code and the High Court has suo motu power under Section 401 of the Criminal Procedure Code, and continuous supervisory jurisdiction under Section 482 of the Criminal Procedure Code.

18-A. At this stage, a reference may be made to another judgment of the Apex Court which was cited by the learned Advocate for the applicant, which is, Mary Angel and Ors. v. State of Tamil Nadu . In this case, the Apex Court, after referring to the judgments in Pamapathy v. State of Mysore , and Raghubir Saran (Dr.) v. State of Bihar , has laid down that if there is an express provision governing the particular subject-matter, then there is no scope for invoking or exercising the inherent powers of the Court because the Court is required to apply, in the manner and mode prescribed, the provisions of the statute which are made to govern the particular subject-matter, but the highest Court in the State could exercise inherent powers for doing justice according to law where no express power is available to do a particular thing and express powers do not negative the existence of such power. The following observations from Raghubir Saran (Dr.) v. State of Bihar (supra) were quoted, with approval, by the Apex Court:

When we speak of the inherent powers of the High Court of a State we mean the powers which must, by reason of its being the highest Court in the State having general jurisdiction over Civil and Criminal Courts in the States, inhere in that Court. The powers in a sense are in alienable attribute

of the position it holds with respect to the Courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. When we speak of ends of justice we do not use the expression to compromise within it any vague or nebulous concept of justice, nor even justice in the philosophical sense but justice according to law, the statute law and the common law again, this power is not exercisable every time the High Court finds that there has been a miscarriage of justice. For, the procedural laws of the State provide for correction of most of the errors of subordinate Courts which may have resulted in miscarriage of justice. These errors can be corrected only by resorting to the procedure prescribed by law and not otherwise. Inherent powers are in the nature of extraordinary powers available only where no express power is available to the High Court to do a particular thing and where its express powers do not negative the existence of such inherent power. The further condition for its exercise, insofar as cases arising out of the exercise by the subordinate Courts of their criminal jurisdiction are concerned, is that it must be necessary to resort to it for giving effect to an order under the Code of Criminal Procedure or for preventing an abuse of the process of the Court or for otherwise securing the ends of justice.

The power to expunge remarks is no doubt an extraordinary power but nevertheless it does exist for redressing a kind of grievance for which the statute provides no remedy in express terms. The fact that the statute recognizes that the High Courts are not confined to the exercise of powers expressly conferred by it and may continue to exercise their inherent powers makes three things clear. One, that extraordinary situations may call for the exercise of extraordinary powers. Second, that the High Courts have inherent power to secure the ends of justice. Third, that the express provisions of the Code do not affect that power. The precise powers which inhere in the High Court are deliberately not defined by Section 561A for good reasons. It is obviously not possible to attempt to define the variety of circumstances which will call for their exercise. No doubt, this section confers no new power but it does recognize the general power to do that which is 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". But then, the statute does not say that the inherent power recognized is only such as has been exercised in the past either. What it says is that the High Courts always had such inherent power and that this power has not been taken away. Whenever in a criminal matter a question arises for consideration whether in particular circumstances, the High Court has power to make a particular kind of order in the absence of express provision in the Code or other statute the test to be applied would be whether it is necessary to do so to give effect to an order under the Code or to prevent the abuse of the process of the Court or otherwise to secure the ends of justice.

19. In view of the aforesaid discussion, I am of the view that inherent powers under Section 482 of the Criminal Procedure Code cannot be pressed into service either for permitting a non-compoundable offence to be compounded or for quashing of prosecution on the ground that the parties wish to compound the offence which is otherwise non-compoundable. I therefore, do not find any merit in this application and the petition is liable to be rejected. Petition is rejected' and rule is accordingly discharged.