

the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, *etc.*; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, *etc.*, or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them

amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R. if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

Conclusion

Section 482 Cr.PC has a very wide scope and is an integral part of Cr.PC in order to meet the ends of justice, however, the section due to its wide scope has to be used wisely and according to the guidelines as discussed by High Courts and Supreme Court in various cases from time to time. Interpretation and application of Section 482 has been several changes over the years due to various precedents. This section has been constantly abused by the various law practitioners and it is necessary that it is used as according to the guidelines laid down by the precedents by apex Court and High Courts.

SECTION 12 OF THE INDIAN STAMP ACT, 1899 – CANCELLATION OF ADHESIVE STAMPS – INTERPRETATION AND SCOPE

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1. A promissory note is also a negotiable instrument as per Section 13 of the Negotiable Instruments Act and the phrase “promissory note” is defined under Section 4 of the said Act.

2. While executing a promissory note affixing of adhesive stamps of required value is necessary. Sometimes, more than one adhesive stamp is required to be affixed depending on the value the stamps.

3. Under Section 35 of the Stamp Act, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person *etc.* Though, under the proviso to Section 35 of the Stamp Act, instrument not duly stamped may be admitted in evidence after payment of deficit stamp duty and penalty or stamp duty and penalty, as the case may be, as promissory note was not covered by the said proviso, unstamped or even insufficiently stamped promissory note cannot be admitted in evidence for any purpose. Consequently, a suit based on such an insufficiently stamped pro-note or unstamped pro-note must be invariably dismissed on that ground itself. It is in this background, Section 12 of the Act gains importance because it provides as to how adhesive stamps to be cancelled and what are the stamps deemed to be unstamped.

4. The case law on the subject of cancellation of adhesive stamps is rather confusing as to whether a particular stamp is cancelled or not. In *Narayana Reddi v. Dr. J. Sarojini Devi*, AIR 1963 AP 378, it is laid down that “drawing of single line across the stamp” is sufficient cancellation and no hard and fast rules can be laid down for it. In *Dhirajlal Mohanlal Khathe Wadi v. Ranchhod Balaram Nayak i.e.* AIR 1974 Bom. 256, it is laid down that “drawing of single line across the stamps is not sufficient cancellation and whether a particular stamp is cancelled or not is a question of fact and not a question of law. In *Pole Chand v. Hukum Chand i.e.*, AIR 2001 MP 8, it is laid down that signature occurred fully or partially on three stamps is proper cancellation. In *Motiram Nathomal v. Mangharam Tirathas, i.e.*, AIR 1942 Sind. 130, it is held that writing figures 28/8 on the stamp is sufficient cancellation though neither name nor initials of the executant or of any other person are written on the stamp. In *Chaganti Venkata Bhaskar v. C. Chandrasekhar Reddy i.e.*, 2010 (5) ALD 116, it is held that the signature across the stamp must commence from or extend to the paper, though there is part of the

signature across the stamp. If it is not so, the stamp must be held, as not properly cancelled and, hence, such a document is deemed unstamped.

5. Before discussing the subject under consideration, it is necessary to reproduce Section 12 of the Stamp Act.

“Section 12 : Cancellation of adhesive stamps :—

(1)(a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall when affixing such stamp cancel the same *so that it cannot be used again*; and

(b) Whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same *so that it cannot be used again*.

(2) Any instrument bearing adhesive stamp which has not been cancelled *so that it cannot be used again*, shall, so far as such stamp is concerned, *be deemed to be unstamped*.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it *by writing on or across the stamp* his name or initials or the name or initials of his firm with the true date of his so writing, *or in any other effectual manner.”*

Sub-section (1) clause (a) covers the case when adhesive stamp is affixed to any instrument chargeable with duty which has been already executed – such stamp must be cancelled so that it cannot be used again.

Sub-section (1) clause (b) covers the case when an instrument is being executed by a person on any paper bearing an adhesive stamp, shall cancel the same so that it cannot be used again, unless it has already been cancelled.

Sub-section (2) is a deeming provision to the effect that whenever any adhesive

stamp has not been cancelled so that it cannot be used again, such stamp shall be deemed to have been unstamped so far as such stamp is concerned. It is this sub-section which causes great hardship when the required adhesive stamp is not properly cancelled, though it is affixed.

Sub-section (3) explains four modes by which an adhesive stamp may be cancelled and provides two places *i.e.*, on the stamp and across the stamp. It is this sub-section (3) which gave rise to giving of varieties of decisions stating that whether a particular adhesive stamp is cancelled or not.

6. It is evident that Section 12 applies to any instrument chargeable with duty as the words “to any instrument chargeable with duty” occur in clause (a) of sub-section (1) of Section 12. At this juncture, it is pertinent to keep in mind that the Stamp Act is a fiscal statute and the main object of which is collection of stamp duty alone. In Section 12(1)(a); Section 12(1)(b) and Section 12(2) of the Stamp Act the words “so that it cannot be used again” are specifically used. This usage of words gives emphasis about the object of the section which is prohibition of the reuse (*i.e.*, using again, an already used adhesive stamp as a new adhesive stamp for purpose of making or executing a particular instrument). This shows that there are two objects *i.e.* one, collection of stamp duty and the other, prohibition of the used stamp again, to avoid stamp duty.

7. It is nowhere provided in any of the provisions of the Stamp Act, either expressly or impliedly that prevention of fabrication (forgery) is also the object of cancellation of adhesive stamps. The same proposition is laid down in *Tata Iron and Steel Co. Ltd. v. Unknown* *i.e.*, AIR 1928 Bom. 80, in another way in these words — The Legislature, I take it, says what it means and that is that the stamp in its cancelled condition cannot be used again. It does not say (cancellation) process must be so thorough that no evilly

disposed person can in any manner render the stamp fit for further use. Indeed, the processes which the Legislature declares to be adequate in Section 12(3) might be defeated by criminal ingenuity. — To put it otherwise, “the words so that it cannot be used again” occurring in sub-sections (1) and (2) do not imply such a degree of cancellation as would make it physically impossible for any dishonest person to make hereafter a fraudulent use of the stamp again. Apart from all these aspects, though a particular process of cancellation of adhesive stamps is indicated in Section 12(3) of the Stamp Act, it is only a guiding and enabling provision, because of the usage of the words “may cancel it by writing on or across the stamp his name *etc.*”

The phrase “or in any other effectual manner” indicates that this section is not exhaustive of all the modes in which adhesive stamps can be cancelled and that in any other effectual manner adhesive stamps can be cancelled. The one and only important object to be achieved is that cancelled adhesive stamp cannot be used again. If this object is achieved, whatever the manner that is adopted for cancellation of adhesive stamp by writing on or across the stamp, is a valid one in law and it is a perfect cancellation, sufficient for legal purposes and it cannot be held that such a cancellation is insufficient and invalid in the eye of law and thereby to treat such a document as unstamped under Section 12 of the Stamp Act. To put it otherwise, simply because the writing of the signature is, only confined to the adhesive stamp or stamps affixed, such document cannot be held to be unstamped in the eye of law on the ground of improper cancellation of adhesive stamps under Section 12 of the Stamp Act. But, this contention goes against the principle laid down in *Chaganti Venkata Bhaskar's* case *i.e.*, 2010 (5) ALD 116. I humbly submit, with great respect, that the proposition laid down in the decision requires reconsideration by a

Larger Bench, in view of my submissions made above and below, for the following reasons.

- (i) The said decision is directed against the fabrication and forgery of a document by affixing already signed adhesive stamp or stamps which is not the object of either the Stamp Act or Section 12 of the said Act.
- (ii) Detection of — Whether a particular adhesive stamp which contains the total signature of the executant is lifted and re-affixed on a particular document under scrutiny — is not concerned because an adhesive stamp can be cancelled by writing signature on the stamp, apart from writing the signature across the adhesive stamp under Section 12(3) of the Stamp Act as words “on or across” are used.
- (iii) The test is whether ordinary men would, on seeing the stamp, believe that that stamp had already been used one, so as to preclude from using it again as laid down in *Narayana Reddi's* case *i.e.*, AIR 1963 AP 378.
- (iv) Under Section 29(a) of the Stamp Act, stamp duty is payable by a person drawing, making or executing an instrument (of course, in the absence of agreement to the contrary). Hence, it is for the drawer or maker or executant to personally see or inspect and know before affixing the required adhesive stamp or stamps or before the completion the instrument that those stamps are cancelled, if not, to cancel. There is no need to say that the said inspection is only by examination by naked eye.
- (v) If, fabrication or forgery is not taken into consideration while interpreting about “proper cancellation of adhesive

stamps” it will become easier to state that a particular adhesive stamp is properly cancelled or not because any writing on or across the adhesive stamp visible to the naked eye, when it is visible as a prominent dot, dash, line or of stroke of any letter of the writing *etc.*, can be held to be as a proper cancellation of the adhesive stamps under Section 12 of the Stamp Act because that itself will be sufficient to the drawer, maker or executant of the document to prevent him from using the said adhesive stamp again. It is a common sense point that before or at the time of executing or preparing any instrument, the drawer, maker or executant (usually the scribe of the instrument) will secure and verify the required valid adhesive stamp or stamps that are needed for the purpose.

- (vi) No doubt, whether a particular stamp is cancelled or not is a question of fact which will be decided by examination of the stamp itself in each individual case as laid down in *Dalpat Singh Narayan Singh v. Jivanmal Jesraj i.e.*, AIR 1961 Raj. 43. But, it is to be decided not on the subjective satisfaction of the Judge, deciding the issue, but it must be an objective satisfaction.

8. Thus, there is need to enlarge the scope of Section 12 of the Stamp Act, by rendering an authoritative pronouncement by superior Courts, preferably by a Larger Bench, to set at rest most of the conflicting decisions, though it is inevitable for the Judge, to personally inspect and satisfy about the cancellation of the adhesive stamps. Till then, we are bound by the existing precedents, awaiting an authoritative, liberal, rather comprehensive pronouncement of a judgment, in this regard.