



NOT COMPOUNDING BUT QUASHING - THE INHERENT POWER OF THE HIGH COURT

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Abstract:

This article discusses about the latest position of law regarding the compounding of offences under the BNSS, 2023 and the erstwhile Code of Criminal Procedure, 1973. The various cases decided by the Hon'ble High Courts and the issues arising out of this position of law is enunciated by the author. The paper also reflects the status regarding the quashing of Serious offences on the basis of compromise and its impact on the compounding of offence under 376 of IPC (64 of BNS) and POCSO Act 2012. The author also indicates the instances where the court could invoke the jurisdiction under Art.142 of the Constitution of India to quash the proceedings.

Keywords: Code of Criminal Procedure, 1973, POCSO Act 2012; Compounding of offence; Constitution of India.

Introduction:

The offences are classified into compoundable and non-compoundable in the BNSS as well as in the Cr.P.C. 1973. As a General rule, crimes are considered to be as against the State and hence, State was only allowed to burden or remit such offence. However, there are few offences which are considered to be private and personal nature. These offences could be compromised by the parties. These offences are classified into two categories. They are compoundable with permission of the Court, compoundable without permission of the Court. All other offences are not compoundable in nature and henceforth, could not be settled by the parties. However, this scheme of the legislation often leads to futile trial procedures, which are of no use since parties may collude themselves to provide for an acquittal. In this paper, author is attempting to bring a bird's eye view about methods evolved by the judiciary in exercise of inherent power to indirectly non-compoundable offences.

Compoundable offences:

There is no specific definition for the term for compoundable offences. In BNSS, Section 359 merely sets out a table of various offences under BNS, which could be compounded by few persons, who are affected by the offence. The author's are not using the word victims very carefully here. The effect of compounding, which results in acquittal of accused person. The table is divided further into compoundable with the permission of the Court and compoundable without any need of permission of the court. No other offences

other than the offences mentioned in the table are capable of being compounded. Therefore, offences under BNS alone are specified as compoundable under BNSS. Other offences are compoundable only when they are specified as compoundable in the respective laws.

Issues arising out of this position of law:

There are large number of personal and private disputes, which are counted in the form of criminal cases and FIR's are lodged in such cases. These criminal cases could not be withdrawn or compromised by the defacto complainants of the crime, even when the parties are settled outside the Court. This lead to futile exercise of trial, where the witnesses could turn hostile and thereby consumed most precious time of the Court. In those disputes, in addition to that, some disputes like matrimonial disputes, which are lodged as criminal cases would be in hindrance for the parties to reunite and have a new life at times even when the parties wish to take different courses through a divorce the criminal prosecution prevents mutual settlement of disputes by the parties by agreeing for a divorce. Similarly, case with boundary disputes, property disputes, which are essential in civil nature. But, transformed into criminal case, due to hatred among the parties are their vengeance towards others. These cases could be settled if they are compoundable in nature. However, it is not possible for the legislature to classify such all offences into compoundable offences. This leads to dragging of parties to above mentioned complicated procedure. Public Prosecutors and Assistant Public Prosecutors are not allowed to withdraw the cases merely, because defacto complainant and

the accused entered into settlement.

Procedure devised by the High Court:

In non-compoundable offences, High Court in series of cases invoked inherent power under 482 Cr.P.C. (Section 528 of BNSS) to quash the Criminal proceedings when the parties have settled the dispute among themselves. In *State of Haryana Vs. Bajanlal*¹, the Hon'ble Supreme Court of India permitted the quashing of criminal proceedings, when the parties are compromised dispute among them. A similar view was taken by the Supreme Court in *Madhan Mohan Abbot* case². In *Bajanlal* case, the Hon'ble Supreme Court of India narrated the circumstances, in which Art.226 of the Constitution of India and Section 482 of Cr.P.C. could be used to the quashing criminal proceedings. In this case, Court held that the power should be used sparingly to quash the criminal proceedings. However, it can be used in circumstances when no cognizable offence being reported or when it is established that the case is apparently arising from illegality. Court held that as a general rule, High Court should not interfere with investigation process. In *Madhan Mohan Abbot Vs. State of Punjab*³. In this case FIR was lodged on offences under Sections 379, 406, 409, 418 r/w 34 of IPC, court found partition arrived at a compromise and thereby settled the disputes and therefore, in spite of offence being non-compoundable in nature Supreme Court quashed the criminal proceedings against the accused persons in the light of compromise. Court held that it is to

¹ AIR 1992 SC 604

² AIR 2008 SC 1969

³ Ibid.2

prevent the abuse of process of law. In State of MP Vs. Laxminarayan⁴, the Hon'ble Supreme Court held that High Court is not deterred by Section 320 of Cr.P.C. (359 of BNSS) in quashing a criminal proceedings, when the parties arrived at a compromise, similarly in Jai Singh Vs. State of Punjab, the Hon'ble Supreme Court took a similar view in compounding section 354 of IPC through quashing criminal proceedings. In Barbat Bhai Vs. State of Gujarat⁵ also, Supreme Court took similar view. However, Supreme Court categorically held that they are not compounding case by a quashing criminal cases to prevent the abuse of the process of law. Courts took the view that FIR in non-compoundable case can be quashed by the High Court in order to prevent an abuse the process of law, when the defacto complainant and the accused compromised the disputes among them.

Quashing of Serious offences on the basis of compromise

On the Analysis of the above mentioned Series of cases we find that High Courts are not compounding, the non-compoundable offences, but merely quashing the FIR in some offences, when there is no purpose in continuing with the proceedings of such offences, because of settlement by the parties. However, at times it creates a catch 22 situation for the higher courts, when the offences charged are serious in nature and the parties are willing to compromise such cases.

⁴ AIR 2019 SC 1296

⁵ AIR 2003 SC 7

Compounding of Offence under Sec.307 of IPC (Sec.109 of BNS)

The offences like attempt to murder u/s 307 of IPC (Sec.109 of BNSS) is one such type of cases. Even a small quarrel can converted into Sec.109 of BNS when few words are added in the F.I.R i.e with an intention to cause death. Even Small injuries near to sensitive organs may lead to such cases. As per the judgment of the Supreme Court in Lalithakumari v. State of UP⁶, the Constitutional Bench of Supreme Court held that whenever a cognizable offence disclosed in the information, police officer has to register the FIR under section 154 of Cr.P.C. (173 BNSS). This leads to situation where police officers are bound to register F.I.R and proceed to investigation even when on a detailed investigation substances are not bringing out a serious case. In many cases, the Hon'ble Supreme Court observed that 307 of IPC(equally applicable to 109 of BNS) is capable of elaborately interpreted and framed even when on a ultimate analysis case does not warrant it. Therefore, compounding of such case or rather than quashing of such case on the settlement of parties often give rise to legal complexity. In Narendar Singh Vs. State of Punjab⁷, the Hon'ble Supreme Court was entertaining the special leave petition against the judgment and order of High Court of Punjab and Haryana on CrMP under 482 of Cr.P.C. (528 of BNSS) in that case along with other charges like Section 323, 324; 307 was also booked against the Accused persons. In this case, the Hon'ble Supreme Court analyzed several cases on 307 and found that on plain reading of Cr.P.C. 1973, 307 is non-compoundable offence and hence, could not be compounded. In addition to that, it is attempt to take life of person and hence; an offence of

⁶ (2013) 14 SCR 713

⁷ (2014) SCR 1012

serious nature, which according to criminal law jurisprudence, not a fit offence to be compounded. However, court found that when a serious offence is charged and the facts and circumstances of the case render a conclusion that the chance of conviction such a serious case is limited. The court should not restrain itself from exercising jurisdiction to quash the proceedings. In this case, Court found that since the parties have compromised the matter and started to live peacefully at the intervention of senior members of panchayat. There would be less possibility of conviction and therefore, further dragged of the offence and continuous of trial. Court found that on cumulative analysis of facts, the settlement arrived between the parties could be acted upon and criminal proceedings could be quashed. However, court held that when trial has taken place, conviction has arrived at merely because parties arrived at compromise High Court should not accept the settlement and quashed the proceedings. In *State of Rajasthan v. Shambu Kewat*⁸ Supreme Court set aside the decisions of the High Court quashing a Charge under Sec.307 of IPC(Sec.109 of BNS) on the basis of a settlement arrived by the parties. as well as Supreme Court held that Sec.307 was made Non-Compoundable offence since legislature considered it as an offence against the society at large and not merely against an Individual. *Dimpy Gujral v. Union Territory of Chhattisgarh*⁹ the Hon'ble Supreme Court held that 307 could be considered as serious crime. However, *Narendhra Singh v. State of Punjab*¹⁰, the Hon'ble Supreme Court took the view that does not mean that every case where 307 is added by the police, courts are deterred from exercising power u/s 482 Cr.P.C. Supreme

⁸ (2014) 4 SCC 149

⁹ (2013) 11 SCC 497

¹⁰ (2014) 4 SCR 1012

Court held that while deciding to accept the compromise Court should consider several aspects like nature of the injury, whether the injuries are on vital delicate parts of the human body, the nature of weapons involved etc. The court has to consider the possibility of establishing the charge in a Trial. In *State of Rajasthan v. Shambu Kewat*¹¹, the Hon'ble Supreme Court examined the power of High Court to accept a settlement between the parties, when the offence charged is attempt to murder u/s 307 of IPC r/w 34 of IPC. In that case, the Hon'ble High Court of Rajasthan accepts the settlement even after order of conviction by the Hon'ble Sessions Court. In that case, court took the view that questioning of criminal proceedings after the conviction would not be allowed. In that case, Court held that taking lenient view would leave wrong impression that the criminal justice system would be encouraging further criminal acts from the accused. In *Rajendhra Harichand v. State of Maharashtra*¹², Hon'ble Supreme Court held that Section 307 is a serious non-compoundable offence, compounding the same would be out of place. However the Supreme Court held considering the compromise arrived at by the parties the sentence can be reduced to the period already undergone. *Yogendhra Yadav v. State of Jharkhand*¹³ accused was charged with 307, 147, 148, 149 r/w 345 of IPC. In this case, court was exercising the chance of compound-ability of offence u/s 307 of IPC. However, in this case, accused was convicted u/s 498A and hence, the court reduced the sentence period is already undergone and release the accused person. In *State of MP Vs. Laxminarayana*¹⁴, the Hon'ble

¹¹ (2014) 4 SCC 149

¹² (2011) 13 SCC 311

¹³ AIR 2014 SC 3055

¹⁴ (2019) 5 SCC 688

Supreme Court held that in every case, where 307 was invoked should not result in the denial of relief. The court must examine the injuries, facts and nature of offences before deciding, whether to quash the proceedings. When there is no life threat injury, court could not quote that proceedings even when then there is an allegation of 307 in the charge. In the recent case *Nowza Ali and Others Vs. State of UP*¹⁵, the Hon'ble Supreme Court held that mere presence of 307 in the criminal proceedings would not make the court to adopt the hands of approach. The Hon'ble Supreme Court in this case held that though 307 of IPC is a serious nature when considering the surrounding circumstances, if the court concludes that the alleged fact would not lead to an offence of 307, Court can quash the proceedings in this case, Court could invoke even to quash the proceedings under Art.142. Supreme Court in this case observed that facts and circumstances, nature of injury and weapons used at most suggest only an offence of grievous hurt with deadly weapons under sec.326 of IPC.

Compounding of offence under 376 of IPC (64 of BNS) and POCSO Act 2012.

In *K.Dhandapani v. State*¹⁶ the Hon'ble Supreme Court permitted the compounding of charges u/s 376 of IPC and POCSO Act 2012 on special circumstances. In that case accused was the maternal uncle of the victim and there was a sexual intercourse with a promise to marriage. Later they are happily married and living and hence court quashed the criminal proceedings considering the circumstances of the case. In *Sathish K v. State of*

¹⁵ 2025 INSC 182

¹⁶ MANU/SC0792/2022

Karnatka¹⁷ , Karnataka High Court held that offence u/s 376 of IPC can be permitted to compound in special circumstances including situation, where clause of case could promote the facing life of parties. High court took affidavits from the accused and victim and quashed the proceedings. In Mahesh Darmesh Kage Vs. State of Maharashtra, the appellant was charged with 376, 504, 505, 506 of IPC. In this case, defacto complainant alleged that appellant comes to her class and sexual relationship with her without any consent and giving false promise to marriage and later avoided to marry some reason or another. In this case, Court examined whether false promise to marriage in the case attract section 376 of IPC. Court held that on the facts and circumstances of the case, there is no need to continue with the criminal proceedings against the accused person, when the court is opinion of that there was no false promise to marriage and sexual relationship in order to attract the IPC in his case.

Conclusion:

Author's could only make a brief analysis of the cases, where the High Court exercises the powers under Section 482 of Cr.P.C. or Art.226 to quash the criminal proceedings on the basis of settlement by the parties. The opinion of the authors the number of Compoundable offences could have been enhanced . The cases more private in nature could again brought within the list. There could be another category of cases which could be compromised at the level of District Judiciary. The supervisory jurisdiction of the Hon'ble High Court under Art.227 would ensure District Judiciary is exercising these powers within the limits . The serious offences like Attempt to Murder , Rape ,

¹⁷ CRIMINAL PETITION 4172 of 2022

Offenses under POSCO Act,2012 etc should be quashed in appropriate cases by the Higher Judiciary through Sec528 of BNSS(Sec,482 of Cr,P.c) or Art.226 of the Constitution of India.

