

**COMPOUNDING OF OFFENCES UNDER THE INDIAN PENAL CODE AND
THOSE UNDER OTHER LAWS.**

BY

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1. This article is an attempt to understand the law of composition of Criminal Cases. What the law of composition is rather than what it ideally should be is the theme. Almost a decade of interacting with the Judicial Officers of the North Eastern States during their training in NEJOTI, (acronym for North Eastern Judicial Training Institute) the writer encountered what some of the trainees facetiously described as tyranny of Precedents in all fields of law. The small area of Criminal Law as the law of compounding of Criminal cases covers it has not remained unaffected by so called tyranny of Precedents. Before trying to look at the precedents real and so called, it will be appropriate to read the statute first
2. As is common knowledge the basic provision is contained in section 320 of the Code of Criminal Procedure 1973 (the Code, 1973 hereinafter). This section, with minor changes in the two Tables of offences under the Penal Code in Subsection (1) and (2) thereof as also providing for the effect of death of the person competent to compound and providing a bar against composition against an accused having a previous conviction, is the reincarnation of Section 345 of the code of Criminal Procedure 1898 (the Code, 1898 hereinafter). Apart from the above the definition of "offence" in Section 2(n) of the Code, 1973 and the provisions of Section 4 and 5 of the Code, 1973 which respectively are the same as the Provision of Section 4(1) (O), Section 5 and Section 1(2) of the Code, 1898 have to be considered to understand the law as to compounding of offences in its entirety.
3. In the background as above the law as to compounding of offences may be divided into two parts. In the first part compounding of offences under the Penal Code may be considered and in the second part offences under laws other than Penal Code may be considered.

THE FIRST PART

4. Penal Code offences do not pose any difficulty as far as Statute is concerned. Section 320(1) of the Code, 1973 is as follows:

“The offences punishable under the sections of the Indian Penal Code (45 to 1860) specified in the first two columns of the Table next following may be compounded by the person mentioned in the third column of that Table:”

The Table lists twenty one offences. Section 320(2) similarly in a Tabular form provided for compounding of thirty six number of offences under the Penal Code but with the permission of the Court before which any prosecution of such offence is pending, Section 320(3) makes the abetment of any offences or an attempt to commit such offences when such attempt is itself an offence also compoundable. Subsection (4) to (8) provide for compounding of offence on the permission of appellate court revisional court, and the court to which the case is committed, the effect of composition, the effect of death of the person competent to compound and the bar against compounding of an offence where there is provision for enhanced punishment on account of a previous conviction. Lastly subsection (9) is in the following terms.

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

As already indicated Section 320 of the Code, 1973 corresponds to Section 345 of the Code, 1898 with some changes as to the lists of Penal Code offences, absence of the effect of death of the person competent to compound and the absence of the bar of composition on enhanced punishment because of previous conviction.

5. On the law such as above one would think that there can be no question that no Penal Code offences not listed in the two Tables under sub-section (1) and (2) of Section 320 of the Code, 1973 can be compounded. Turning now to the case law on the matter the writer finds that some of the High Courts went against the clear mandate of the law described above and allowed composition of Penal Code offences not listed under Section 320 of the Code. 1973 in the purported exercise of power under Article 226, and Article 227 of the Constitution of India or under Section 482 of the Code, 1973. A complete answer at the High Court level to allowing non compoundable offences such as under section 498-A, 326, 307 etc. of the Penal Code to be compounded in the teeth of the statutory provisions in Section 320 of the Code, can be read in –

1. *Desbo alias Nirmala Naskar alias Nirmamoy Naskar, Petitioner*

Vs

*State , (1992 CrL. L.J 74)
(D.B) – Calcutta High Court*

2. *Mohon Singh*
Vs
State 1993 (Crl. L.J. 3193)
(F.B) – Rajasthan High Court.
3. *State of Karnataka*
Vs
H.S. Revanasiddappa (1994 Crl. L.J. (2928)
(D.B) – Karnataka High Court
4. *Annamdevula Srinivasa Rao*
Vs
State of Andhra Pradesh
(1995 Crl. L.J. 3964) – Andhra Pradesh High Court.
5. *Smti. Neeta Sanjay Tadage*
Vs
Smti Vimal Sadashiv Tadage
1997 Cri. L.J 3263- Bombay High Court.

Indeed the case listed as No. 4 has been relied in the case listed as No.5 above. In the above cases extensively quoting several Supreme Court decisions the High Court unequivocally laid down that in view of the mandate of Sub-Section (9) of Section 320 of the Code, 1973 the courts do not have power to permit compounding of offence which are not compoundable nor can the High Courts direct the Subordinate courts to allow compounding of non compoundable offences either under Section 482 of the Code, 1973 or under the provision of Article 226/227 of the Constitution of India.

- 6 Precedents from the Supreme Court may now be looked at. The Supreme Court consistently followed the law under Section 345 of the Code, 1898 or under Section 320 of the Code,1973 according to the date of the cases coming before the Court. In *Biswabahan Das Vs Gopen Chandra Hazarika A.I.R 1967 S.C 895* the Supreme Court laid down the following principle of law :-

“If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting in conviction or acquittal. If composition of an offence is permissible under the law the effect of such composition would depend on what the law provided for.”

In *Ramesh chandra VS A.P Jhavari A.I.R 1973 S.C 84* the Supreme Court held invalid a permission for compounding a compoundable and a non compoundable offence and refused to uphold an acquittal on the basis of such a composition.

In *Ram Pujan Vs State of U.P. A.I.R 1973 S.C 2418* offence punishable under Section 326 of the Penal Code was compromised between the parties at the appellate stage. After verification of the genuineness of the compromise the High Court refused to permit compounding of the non compoundable offence under Section 326 of the Penal Code but reduced the sentence in view of the compromise. The Supreme Court upheld the approach of the High Court.

In *Rajendra Singh Vs State (Delhi Administration)* A.I.R 1980 S.C 1200 the Supreme Court granted permission to the parties to compound the offence under Section 325 of the Penal Code which is compoundable but refused permission to compound the other offence under Section 452 which is non-compoundable. Sentence however was reduced in view of the compromise.

In *Malkiat Singh Vs State of Punjab* (1982)3 SCC 371 in view of compromise in a non compoundable case the Supreme Court following *Rampujan (Supra)* only reduced the sentence of imprisonment to the period already under gone while maintaining the fine.

In *Shah Noor Vs State of Andhra Pradesh* (1982)3 SCC 511, a case under Section 326 of the Penal Code which is non compoundable the Supreme Court noticed the fact that the offence under Section 326 is not compoundable but because of the settlement between the parties upheld the conviction but reduced the sentence to the period already undergone and imposed a fine of Rs. 3000/-.

In *Jalaluddin Vs State of U.P.* (2002) 9 SCC 561, the appellant was convicted for the offence under section 326 of the Panel Code and sentenced to undergo rigorous imprisonment for 18 months. Dealing with an application for compounding of offence under section 320 of the Code, 1973 the Supreme Court said –“ It has been stated that the complainant and the appellant are close relations and have compromised the dispute outside the Court. It is prayed that the offence may be permitted to be compounded. The offence under section 326 IPC is not compoundable and it cannot be compounded. The application for compounding is, therefore, rejected.”. However the sentence was reduced to the period already undergone.

7. From the cases considered above it can be said that uniform practice of the Supreme Court is to apply the law under Section 345 of the Code, 1898 or under Section 320 of the Code, 1973 as the case may be strictly and not permit compounding of offence non compoundable under those Sections. Mandate of section 345(7) of the Code, 1898 which is the same as that of Section 320(9) of the Code, 1973 was invariably obeyed and the concession made for compromise in a non compoundable case was only to reduce the sentence. This is so till one reaches *Y. Suresh Babu Vs State of Andhra Pradesh* (1987) 2 JT (SC) 361 where compounding of a non compoundable offence under Section 326 of the Penal Code was allowed as a special case. But the Supreme Court took care to term the case as a special one and directed that the case should not be treated as a precedent.

The Supreme Court in *Mahesh Chand Vs State of Rajasthan* A.I.R 1988 S.C 2111 a case under Section 307 of the Penal Code which is not compoundable again allowed composition by directing the trial court to accord permission to compound. This was done in the facts and circumstances of that case.

Drawing inspiration from the above two Judgments of the Supreme Court some of the High Courts and trial Courts began in the teeth of Sub-section(9) of

Section 320 of Code, 1973, to permit composition of offence which are not compoundable. Trial courts which adopted this course were not adequately equipped to pause and determine whether these two judgments declare any law within Article 141 of the Constitution of India and many of the High Courts perhaps because of inadequate submissions of counsels failed to notice that in Y.Suresh Babu (Supra) the Supreme Court itself directed not to treat the case as a precedent and also failed to consider and determine whether Mahesh Chand (Supra) lays down any binding precedent.

8. It is noteworthy that a common feature of all the five cases, namely Desbo (Supra) of Calcutta High Court, Mohon Singh (Supra) of Rajasthan High Court, State of Karnataka (Supra) of Karnataka High Court, Annamadevula (Supra) of Andhra Pradesh High Court and Smti Neeta (Supra) of Bombay High Court mentioned in para 5 earlier is that Mahesh Chand (Supra) was relied on in all of them and these High Courts unequivocally said that Mahesh Chand lays down no binding precedent to permit compounding of non-compoundable offences. Para 5 of Desbo (Supra) may only be quoted here :-

“ Para 5 – Law declared by the Supreme Court is binding on us as absolute authority, not only under the mandate under Art 141, but even de hors that Article, because of the precedent – bound system of judicial administration, borrowed by us from the Britishers and followed by us with almost devotional rigidity. And, therefore, if the Supreme Court in Mahesh Chand (Supra) made a declaration of law to the effect that an offence, though not listed in Sec. 320, could still be compounded, we might have followed the law so declared. We are afraid that we cannot enter into the embarrassing question as to whether, as pointed out by Salmond (Jurisprudence – 10th Edition, p182), a precedent, which would have otherwise had absolute authority, would lose the same because of being arrived at palpably per incuriam, because the decision in Mahesh Chand (Supra) accepted the position that the offence u/s 307, Penal Code “is not compoundable”, even though the provisions of Sec. 320(9) of the Code were not expressly referred to. We are, therefore, not required to perform any such delicate task to ascertain as to whether the Courts, Subordinated to the law declared by the Supreme Court, is in such a state of subordination as to be bound by the enunciation of law by the Supreme Court manifestly at per incuriam of clear and contrary Legislative Laws, to which also the Court cannot but owe allegiance under the Constitution, unless declared to be ultra vires by a complement (Competent) Court. Because, the Supreme Court in Mahesh Chand (supra) has declared or announced no law to vest the decision with the authority of a binding precedent. What the Supreme Court does in a particular case may bind the parties and the Court concerned for the purpose of that particular case. But what does and can bind the other courts as a

precedent is not what the Supreme Court does in fact in a given case but what it declares to be the law. We have not been able to glean any such declaration of law in Mahesh Chand (supra) as to compoundability of non-compoundable offence. We have rather found indication to the effect that the Supreme Court in Mahesh Chand (supra) decided to treat the matter “as a special case”. The decision not having determined or declared any question of law cannot amount to a precedent to bind us in other cases.”

The above is a brilliant anticipation of what eventually the Supreme Court itself said about Y. Suresh Babu (Supra) and Mahesh Chand (supra) in Ramlal and another Vs State of J &k A.I.R 1999 S.C 895 decided on 25.1.99. Both Y. Suresh Babu (supra) and Mahesh Chand (supra) were held to be judgement per incuriam as the two cases did not consider section 320(9) of Code, 1973 and as such are not be treated as precedent.

It may be mentioned here that Saraswati Sutradhar Vs State of Tripura (1999) 1 GLR 94 decided on 28.8.1998 relying on which Arun Bora (2001)2 GLR 517 was decided on 2.1.2001 and both in turn relying on Mahesh Chand (supra) are also judgments per incuriam and also do not lay down good law.

It will be apposite to excerpt here some observation from Delhi Administration Vs Monohar lal A.I.R 2002 S.C 3088 though made on a different field of law. In a judgement dated 29.8.2002 the Supreme Court in connection with sentencing in a case under the Prevention of Food Adulteration Act had to consider two Supreme Court judgment relied on by the High Court. The two Judgements are N Sukumaran Nair Vs Food Inspector, Mavelikara 1997 (9) SCC 101 and Santosh Kumar Vs Municipal Corporation 2000 (9) SCC 151. Relying on these two Supreme Court Judgments the High Court ordered commutation of sentence under Section 433 of the Code, 1973. The Supreme Court on appeal by the State had this to say :-

“Apparently, the learned Judge in the High Court was merely swayed by considerations of Judicial comity and propriety and failed to see that merely because this Court has issued directions in some other cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete justice, keeping aside even technicalities, the High Court, exercising statutory powers under the Criminal Laws of the land, could not afford to assume to itself the powers or jurisdiction to do the same or similar things. The High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by the court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision\ and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it

appropriately, to the cases before them. Considered in that context, we could not find from the decisions reported in 1997 (9) SCC 101 (supra) and 2000 (9) SCC 151 (supra) any law having been declared or any principle or question of law having been decided or laid down therein and that in those cases this Court merely proceeded to give certain directions to dispose of the matter in the special circumstances noticed by it and the need felt, in those cases, by this Court to give such a disposal. The same could not have been mechanically adopted as a general formula to dispose of, as a matter of routine, all cases coming before any or all the courts as an universal and invariable solution in all such future cases also. The High Court had no justifying reason to disturb the conclusion of the first Appellate Court, in this regard.”

9. This part may be ended with the hope that after A.I.R 1999, SC 895 noticed earlier the tyranny of precedents in the teeth of Section 320 (9) regarding the compounding of non compoundable offences will finally cease.

THE SECOND PART

10. In this part the law of composition of offences under laws other than the Penal Code may be considered. The definition of offence under Section 2(n) of the Code, 1973 is as under : “Offence” means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871 (1 to 1871)

The definition is the same in section 4(1) (0) of the Code, 1898. Sub-Section (1) and (2) of Section 320 of the Code, 1973 deals with offences punishable under the Penal Code. It is significant that other Sub-sections that is Sub-sections – (3), (4), (5), (6), (7), (8) and (9) of the Section 320 use the word “Offence” without any qualifying words. To understand the scope of section 320 of the Code, 1973 the definition of offence quoted earlier has to be used. If that is done there can be no question that Section 320 of the Code, 1973 like its Predecessor section 345 of the Code 1898 true to its heading deals not only with compounding of Penal Code offences but deals also with compounding of offences punishable under other statutes by which such offences have been created. Considering only this provision of law one finds that the offences under other laws are clearly not compoundable. In the Code, 1898 Schedule II , Column 6, unequivocally states that all offence against other laws are not compoundable, Schedule II of the Code, 1898 has become schedule I of the Code, 1973 with some changes – old column 6 of the old schedule has been deleted. The reason for deletion as noted in the Statement of Objects and Reasons of the Bill is

that since section 320 itself speaks about compoundability or non-compoundability of an offence column 6 is unnecessary.

At this stage one may have a closer look at Ramesh Chandra Vs A.P. Jhaveri AIR 1973 S.C 84 already noticed in Para 6 of this essay. In that case the Supreme Court was dealing with a complaint against the accused – appellant relating to two kinds of offence namely section 420 of the Penal Code and section 13 of a Maharashtra Act (a local or special Act). The offence under section 420 of the Penal Code is compoundable with the permission of the Court. To reach the conclusion that the offence under section 13 of the Maharashtra Act is not compoundable either with or without the permission of the Court the Supreme Court considered the provision of Sub-section (7) of Section 345 of the Code, 1898 which is Sub-Section (9) of section 320 of the Code, 1973 which says that no offence shall be compounded except as provided by this section. Then the Supreme Court took help of the definition of “offence” in section 4(1) (0) of the Code, 1898 which is the same as in section 2(n) of the Code, 1973. Thus the conclusion that the offence under section 13 of the Maharashtra Act is not compoundable was reached even without the aid of column 6 of Schedule II of the Code, 1898 which at the end lists four categories of offences under the heading “Offences Against Other Laws”.

11. To complete the survey of the law on this part two other provisions of the Code of Criminal Procedure need to be looked at. They are Section 4 and Section 5 of the Code, 1973 which are redraft respectively of Section 5 and 1(2) of the Code, 1898.

To conjoint effect of the above provisions of Code of Criminal Procedure is :-

1. That all offences whether under the Penal Code or any other law have to be investigated, enquired into, tried and otherwise dealt with following the provisions of the Code of Criminal Procedure.
2. The above mandate is subject to the qualification that in respect of offences under any law other than Penal Code if there is any enactment regulating the manner or place of investigating, enquiring into trying or otherwise dealing with such offences such enactment will prevail over the Code of Criminal Procedure.
3. Unless there is a specific provision to the contrary the provision of special or local law prescribing any special form of procedure or conferring any, special jurisdiction or power will prevail over the provisions of Code of Criminal Procedure.

The group of words “otherwise dealing with such offences” in section 4(2) of the Code, 1973 summarized above will undoubtedly cover “Compounding of such offences”.

12. From the above it follows that for the offences under laws other than Penal Code one has to look to the laws creating such offences. If there is a prescription for compounding such offences that has to be followed and not the Code of Criminal Procedure. For the manner or effect of compounding also such special law has to be

followed. It may be mentioned here that apart from the Code of Criminal Procedure there is no other Procedural enactment within Section 4(2) of the Code, 1973. But there are local laws and special laws galore within Section 5 of the Code, 1973.

13. In Para 10 Ramesh Chandra A.I.R 1973 SC 84 dealing with an offence against other laws as to its compoundability or otherwise was discussed. It will be worthwhile to test the principles discussed above in relation to an offence created by Negotiable Instruments Act 1881 (N.I Act, hereinafter). The question is on the principles of law discussed above is an offence punishable under section 138 of the N.I. Act, compoundable or non-compoundable ?

To answer the question the following reasons are relevant.

1. There is no procedural enactment for trial or otherwise dealing with the offence within section 4(2) of the Code, 1973.
2. Section 142 of the N.I. Act rather emphasizes that except for the three matters mentioned in clauses (a), (b) and (c) in that section Code, 1973 applies.
3. The special law that is the N.I. Act creating the offence does not prescribe any special form of procedure within Section 5 of the Code 1973.
4. The N.I. Act is silent about Compounding of the offence under Section 138 thereof.

There is therefore no way not apply Section 320 of the Code, 1973 for “otherwise dealing with” that is compounding of the offence under Section 138 of the N.I. Act. For all these reasons the only answer to the query possible on the principles of law is that the offence under Section 138 of the N.I. Act is not compoundable.

14. One may now look at the case law on the question. In 1995 Cri L.J 3964 (Supra) already noticed in the First Part this question arose only indirectly in a Crl. Petition under Section 482 of the Code, 1973 before the Andhra Pradesh High Court. The offence under Section 138 of the N.I. Act was admitted to be not compoundable.

In M. Mohan Reddy Vs Jairaj D Bhale 1996 Crl. L.J. 1010 Andhra Pradesh High Court the question whether the offence under Section 138 of the N.I. Act is compoundable or not fell for decision directly. The Judgment assumes erroneously, it appears that Section 320 of the Code 1973 deals only with Penal code offences and does not consider the impact of Section 2(n), 4 and 5 of the Code, 1973 on the question. That apart the judgment disagrees with 1995 Cri. L.J 3964 (Supra) “mainly on the ground that the column regarding compounding of offences in the second schedule to old CrPC is intentionally taken away by the Legislation and Section 320 CrPC (new) deals with the offences punishable under the Indian Penal Code only and does not lay any bar or prohibition regarding compounding of offences against the other laws”. As already indicated the above reasoning flies in the face of Section 2(n), 4 and 5 of the Code 1973, as also of Ramesh Chandra (Supra) discussed earlier. The reason for deletion of the column 6 in the second schedule to Code, 1898 is superfluity as because both Section 345 of the Code, 1898 and Section 320 of the Code, 1973

deals with compoundability of offences within the meaning of Section 4(1) (0) of Code, 1898 or Section 2(n) of the Code, 1973 respectively. Statement of Objects and Reasons along with Notes on clauses of the Bill, which became the Code, 1973 can be read in the Gazette of India, 10.12.1970, Part II, S.2 Ext. Page 1309. It says that column 6 will be omitted because clause 327 (i.e Sec. 320) itself makes the necessary provision in this regard. Lastly the Judgement assumes that absence of any bar under the N.I. Act or under the Code of Criminal Procedure is reason enough to hold the offence to be compoundable. This is in teeth of A.I.R 1967 S.C 895 quoted in the FIRST PART in this essay. The law on the authority of the Supreme Court undoubtedly is that it is not the silence and / or absence of any restriction on / against compounding in the procedural law or in the Special law that makes the offence Compoundable but it is the presence of a positive prescription of compoundability in such law that will make the offence compoundable. M. Mohan Reddy (Supra), is a judgment per incuriam and does not lay down good law.

In K.V Antony Vs Sherafuddin 1996 CriLJ 135 a Division Bench of Kerala High Court held that the offence punishable under Section 138 of the N.I. Act cannot be compounded. The judgment notices Section 320 (9) of the Code, 1973 and clinches the question of compoundability or otherwise in the following words :-

“Any offence coming under a special enactment cannot be compounded under the provisions of the Code. In a case where a special enactment provides for compounding of offence it can certainly be done. It not, it cannot be done Section 138 of the Negotiable Instruments Act does not provide for compounding the offence. So long as there is no specific provision for compounding of the offence under Section 138 of the Negotiable Instruments Act, the offence cannot be compounded by invoking section 320 CrPC”

This is the law also laid down in A.I.R 1967 SC 895 noticed earlier. The Judgment lays down the correct law.

In Naimesh P. Pandya Vs State of Gujrat 1998 CriLJ 4424, Gujrat High Court granted permission to Compound an offence punishable under Section 138 of the N.I. Act on the sole ground that “in the absence of any contrary provision in the facts and circumstances of the present case there cannot be any bar for granting permission to compound the offence.” For the reasons stated earlier this is far wide of the law discussed above and thus cannot be treated as a precedent laying down correct law.

In M. Rangaswamaiah Vs R. Shettappa 2002 CriLJ 4792 Karnataka High Court relied on M.Mohon Reddy (Supra) and Naimesh Pandya (Supra) and held that in the absence of any prohibition in the N.I. Act or the Criminal Procedure Code the offence punishable under Section 138 of the N.I. Act is compoundable. It has already been shown how the two judgments relied on in this Judgment are erroneous in law. That apart the Judgment despite noticing Section 4(2) of the Code, 1973 overlooked

its mandate that a positive prescription for compounding rather than absence of prohibition is needed to make the offence compoundable. The judgment also implies that only “Part II of the First Schedule to the Code dealing with classification of offences under other laws does not contain a column totally prohibiting compounding of offences under other laws in the manner it has been so in the old code.” This is factually erroneous because column 6 of the Code, 1898 has been deleted even from the Penal Code offences has been deleted even from the Penal Code offences. Reason for deletion has already been stated earlier in this essay. The Judgment therefore cannot be said to have laid down correct law. This Judgment also drew inspiration from O.P. Dholakia Vs State of Haryana (2000) 1 SCC 762, a Supreme Court Judgment. What Mahesh Chand (Supra) did for cases under the Penal Code, Dholakia (Supra) threatens to do for cases under other laws. Some day the Supreme Court itself may do to Dholakia (Supra) what Ramlal (Supra) did to Mahesh Chand (Supra). Until then suffice it to say that the quotation from Desbo (Supra) and Delhi Administration Vs Monohar Lal (Supra) in the FIRST PART of this essay are potent enough tool to blunt Dholakia (Supra) as a precedent.

15. It will be useful to notice a few other Judgments of the Supreme Court in cases under Section 138 of the N.I. Act. All these cases noticed below contain elements of compromise and the Supreme Court consistent with its earlier approach did not set aside the conviction but only directed reduction of the sentence or ordered reduction of the sentence.

In M/S Cranex Limited Vs M/S Nagarjuna Finance Ltd. A.I.R 2000 S.C 3145 in an appeal against conviction under Section 138 of the N.I. Act, an application (nature not mentioned, presumably for compounding) filed in the appellate court was dismissed. Revision against the order was also dismissed by the High Court. In the appeal to the Supreme Court against the interlocutory proceedings the Supreme Court ordered accused to deposit the cheque amount in the trial court. During the pendency of the appeal there was a settlement between the parties and Rs. 596688 was deposited in trial Court. On these facts and the circumstances of compromise the Supreme Court observed thus “ The appellate Court will consider the subsequent events, namely, of the appellant having paid a sum of Rs.5,96,688 under a settlement to the 1st Respondent and will dispose of the appeal in accordance with law.” The Supreme Court did not order compounding of the offence as in Dholakia (Supra) but directed the appellate Court to convict or set aside the conviction on the merits and or to pass any sentence as the appellate Court deems fit.

Next in P. Mohan Babu Vs D. Ramaswamy A.I.R 2000 S.C 3543 the Supreme Court had again to consider a “Subsequent development” (A settlement by payment of the entire amount of the disputed cheque to the full satisfaction of the complainant). Supreme Court did not set aside the conviction but observed. “In view of the said development we are disposed to save the appellant from the imprisonment part of the sentence. We therefore alter the sentence to a fine of Rs.5000/-.”

In Rajneesh Aggarwal Vs Amit Bhalla A.I.R 2001 S.C 518 the Supreme Court held thus “once the offence is committed, any payment made subsequent there

to will not absolve the accused of the liability of criminal offence.” “It may have some effect on the sentence.”

Lastly two recent Judgments of the Supreme Court in cases under Section 138 N.I. Act by a three Judge Bench delivered on 5.8.2002 and 12.8.2002 may be read. In *Siva Sankaran Vs State of Kerala* (2002) 8 SCC 164, the Supreme Court held thus : “3. *It has been brought to our notice that a compromise has been arrived at between the parties as a result whereof a sum of Rs. 45,000 has been paid by the appellant in full and final settlement and the same has been received by Respondent 2, namely K.K. Chandran*”. “4. *After hearing the counsel for the parties, we modify the sentence and direct that instead of the appellant suffering imprisonment for six months a fine of Rs. 1000/- be imposed.*”

In *K.L. Kunjappan Vs Rafeeqe and another* (2002)8 181 the same three Judge Bench of the Supreme Court on the money due under the cheque having been paid and received only reduced the sentence to the period already undergone.

Thus apart from the reason alluded to earlier *Dholakia* (Supra) decided on 15.11.1999 by a two Judge Bench of the Supreme Court must yield to the above three Judge Bench decisions decided on 5.8.2002 and 12.8.2002.

To summaries, on the statute and the decisions of the High Court and the Supreme Court discussed above in the absence of any prescription for compounding in the N.I. Act the offence under Section 138 of N.I. Act is not compoundable. The same will be the result for offences under other special or local laws if the statute creating the offences does not provide for compounding.