

AFR

Reserved

Court No. - 14

Case :- U/S 482/378/407 No. - 516 of 2021

Applicant :- Rishi Mohan Srivastava

Opposite Party :- State Of U.P. & Another

Counsel for Applicant :- Naved Ali, Sandeep Yadav

Counsel for Opposite Party :- G.A., Pawan Bhaskar

Hon'ble Chandra Dhari Singh,J.

1. The instant petition under section 482 Cr. P.C. has been filed with the prayer to compound the offence committed by the petitioner under section 138 of the Negotiable Instrument Act, 1981 in Complaint Case No.515 of 2016 (Abhay Singh vs. Jai Construction Co. and another) and further to quash the sentence of one year awarded to the petitioner.
2. The facts of the case, in brief, are that the petitioner and opposite party no.2 had a business relationship and during the course of business, the petitioner had issued two cheques each of Rs.1,00,000/- (One Lakh) in favour of opposite party no.2 and when he had deposited, the cheques were bounced due to insufficient fund. The opposite party no.2 filed a complaint case bearing no.515 of 2016 (Abhay Singh vs. Jai Construction Co. and another) under section 138 of the Negotiable Instrument Act (for short 'N.I. Act'). After the completion of the trial, the court has convicted the petitioner and sentenced him one year simple imprisonment and fine of Rs.3,00,000/- (Rupees three lakhs) vide judgment and order dated 27.11.2019. Being aggrieved the petitioner had preferred a Criminal Appeal No.01 of 2020 before the Additional Sessions Judge, Faizabad and at the time of hearing the appeal, the petitioner had deposited Rs.1,00,000/- (one lakh) before the Additional Sessions Judge,

Faizabad, ultimately the appeal had been dismissed vide order dated 14.12.2020 against which the petitioner has preferred a Criminal Revision No.664 of 2020 before this Hon'ble Court which too had been dismissed at the admission stage vide order dated 18.12.2020. After the dismissal of the criminal revision, the complainant/opposite party no.2 and the petitioner have entered into settlement through his father and is ready to make payment of rest of Rs.2,00,000/- (Two Lakhs) by means of Demand Draft No.374901 of State Bank of India to opposite party no.2. On 22.01.2021 the petitioner and the opposite party no.2 have amicably entered into the agreement, which is placed on record as Annexure 4 to the instant petition. The accused/petitioner has moved this court under section 482 of Cr.P.C. for the following relief:-

"It is therefore prayed to this Hon'ble Court kindly may be pleased to compound the offence committed by the petitioner under section 138 of the Negotiable Instruments Act, 1981, in complaint case No. - 515 of 2016, District - Faizabad, titled as "Abhay Singh Vs. Jai Construction Co. and another" and further quash the sentence of 1 year awarded to the petitioner"

3. With this background, learned counsel for the petitioner has submitted that this petition has been filed on 01.02.2021 on the basis of changed circumstances with the prayer to compound the offence. Learned counsel further submits that this Hon'ble Court may invoke its inherent power under section 482 Cr.P.C. so that ends of justice could be secured as the object of 'N. I. Act' is primarily compensatory and not punitive and moreover section 147 of 'N.I. Act' would have an overriding effect on section 320 Cr.P.C. irrespective of which stage the parties are compromising with the kind leave of this Hon'ble Court. It has

also been submitted that on 11.02.2021, the co-ordinate Bench of this Court passed an order and directed the parties to appear before the Senior Registrar Lucknow Bench on 23.02.2021, so the factum of compromise could be verified. In compliance of the order dated 11.02.2021, both the parties had appeared before the Senior Registrar of this Court and the compromise deed was verified by the Senior Registrar. Learned counsel submits that the petitioner is languishing in jail since 14.12.2020 and has already served half of the sentence.

4. In support of his arguments, learned counsel for the petitioner has submitted that in the case of **Damodar S. Prabhu vs. Sayed Babalal H** report at **2010 (2) SCC (Cri) 1328**, the Hon'ble Apex Court had formulated the guidelines for compounding the offence under section 138 N.I. Act wherein in para 21, the following has been held :

"With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:-

THE GUIDELINES

- (i) In the circumstances, it is proposed as follows:
- (a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second

hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

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

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

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

5. Learned counsel also submitted that in the case of **M/s Meters and Instruments Private Limited and another vs. Kanchan Mehta** reported at **2017 (7) Supreme 558** Hon'ble the Apex Court in para 18, the following has been held :

i) Offence under [Section 138](#) of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under [Section 139](#) but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the [Cr.P.C.](#) but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of [Section 258](#) Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

(ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be

encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

(iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

(iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to [Section 143](#), to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under [Section 357\(3\)](#) Cr.P.C. to award suitable compensation with default sentence under [Section 64](#) IPC and with further powers of recovery under [Section 431](#) Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

(v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per [Section 264](#) Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to [Section 143](#) becomes necessary, where sentence of one year may have to be awarded and compensation under [Section 357\(3\)](#) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.

6. Learned counsel for the petitioner has further submitted that the petition under section 482 Cr.P.C. is maintainable after the dismissal of the revision on merit. To support of this arguments,

he has relied upon the judgment of Gujarat High Court in the case of **Kripal Singh Pratap Singh Ori vs. Salvinder Kaur Hardip Singh** reported at **2004 CrL. L. J. 3786** wherein the following has been held :

"16.I have considered the decisions cited by the learned counsel for the respective party and some other decisions of the Apex Court and I do not think it necessary to enlist those decisions which are taken into consideration for the purpose of the present proceedings. But ultimately one balanced principle has emerged that the petitions invoking inherent powers under [section 482](#) Cr.P.C. after dismissal/disposal or revision application under [section 397](#) Cr.P.C. read with [section 401](#) Cr.P.C., are not maintainable by the same party, more so when no special circumstances are made out. The gist of this ratio is reflected in the decision reported in AIR 2001 SC 3524 in the case of [Rajinder Prasad vs. Bashir and ors.](#) It was contended before the Apex Court that as the earlier revision petition filed by the accused persons under section 397 of the Code has been rejected by the High Court vide order dated 13.7.1990, they had no right to file the petition under section 482 of the Code with prayer for QUASHING the same order. While dealing with the above contention the Apex Court observed that, "...We do not agree with the arguments of the learned counsel for the respondents that as the earlier application had been dismissed as not pressed, the accused had acquired a right to challenge the order adding the offence under section 395 of the Code ..." (i.e. IPC) It is further observed that, "We are of the opinion that no special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the High Court under Section 482 of the Code and the impugned order is liable to be set aside on this ground alone.."

17. So can be legitimately argued and inferred and held that in all cases where the petitioners are able to satisfy this court that there are special circumstances which can be clearly spelt out , subsequent application invoking INHERENT powers under section 482 Cr.P.C. can be moved

and cannot be thrown away on the technical argument as to its sustainability. The apex court in case of Rajendra Prasad (supra) was dealing with a case related to first part of section 482 Cr.P.C. but, when it comes to third part, the approach should remain more pragmatic and indirect relegation to Supreme Court, if legally possible, can be prevented.

31. In the circumstances, it is hereby declared that the compromise arrived between the parties to this litigation out of court is accepted as genuine and the order of conviction and sentence passed by the learned JMFC, Vadodara and confirmed in appeal by the learned Sessions Judge, Fast Track Court, Vadodara, therefore, on the given set of facts are hereby quashed and set aside as this court intends, otherwise to secure the ends of justice as provided under section 482 Cr.P.C. Obviously the order disposing Revision Application would not have any enforceable effect.

7. Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of *Vinay Devanna Nayak vs. Ryot Seva Sahkari Bank Limited reported at AIR 2008 SC 716* wherein the Hon'ble Apex Court has held as under :

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

19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him."

8. Learned counsel for the petitioner has argued that the law

regarding compounding of offences under the N.I. Act is very clear and is no more res integra and the offences under the N. I. Act can be compounded even at any stage of the proceedings. He submits that in terms of the aforesaid law laid down by the Hon'ble Supreme Court, the parties may be permitted to compound the offence and the conviction of the petitioner be set aside.

9. Per-contra, Sri Alok Saran learned AGA for the State has vehemently opposed the submissions made by the learned counsel for the petitioner and submitted that the instant petition under section 482 Cr.P.C. is not maintainable as the petitioner has already been convicted by the court below and the conviction order has been upheld by the appellate court and by this Hon'ble Court in the revision. Learned AGA has submitted that the present petition under section 482 Cr.P.C. is not maintainable as the High Court has dismissed the revision application on merits. It is further submitted that in view of the provisions of Sub-section (6) of Section 320 Cr.P.C. and the observations made by the Hon'ble Supreme Court in the case of *Tanveer Aquil vs. State of M.P. and another (1999) Supp SCC 63*, the parties should be relegated to the Hon'ble Apex Court to initiate appropriate proceedings to get the actual affect of compromise arrived at between the parties. In the case of *Tanveer Aquil (supra)* the appellant was convicted under section 324 I.P.C. and was ordered to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-. After the pronouncement of the judgment by the High Court the learned Counsel appeared and pleaded for an opportunity of hearing and at that stage the High Court again heard the matter and added a postscript in the judgment confirming the conviction and sentence. The petitioner thereafter had moved the High Court for a compromise to

compound the offence. It was submitted to the High Court that the accused has paid a sum of Rs.3,500/- to the complainant and the learned Counsel for the complainant confirmed of having received the amount of Rs. 3,500/- in token of the compromise arrived between the parties. In Para 1 of the cited decision the Apex Court has observed that "*..... but the High Court did not and indeed could not take into consideration that application since it has deposed of the matter already.*"

10. Learned AGA has also submitted that when this Court has already rejected the revision application on merits, whether the parties or any one of them can be permitted to place compromise and to get an order of acquittal from the very Court, is the question. Therefore, in more than one decisions, the Hon'ble Apex Court has observed that the petition invoking inherent powers under section 482 Cr.P.C. is not maintainable when the earlier revision application filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C. seeking same or similar relief, when dismissed on merit, or has not pressed. However, in the same way the Hon'ble Apex Court has observed in more than one cases that such petitions, though otherwise, are not maintainable, can even be entertained when special circumstances are made out. These observations are in reference to third part of Section 482 of Cr. P.C. Learned AGA has submitted that the present petition is nothing but a gross misuse of the process of the law. There is no ground available to the petitioner for invoking the inherent power under section 482 Cr.P.C. for compounding the sentence on the basis of the compromise as filed by the petitioner. The present petition is devoid of any merit hence it is to be dismissed.
11. I have heard the learned counsel for the parties and carefully perused the compromise arrived at between the parties and

other materials on record.

12. Considering the facts as narrated above, the following two questions arise for consideration -

Whether an order passed by the High Court in the criminal revision petition confirming the conviction can be nullified by the High Court in a petition filed under section 482 Cr.P.C. noticing subsequent compromise of the case by the contesting parties ?

13. Before answer the aforesaid questions as framed, I shall examine the relevant provisions of the Cr.P.C. as well the Negotiable Instrument Act. I may extract the Section 320 Cr.P.C., Section 147 of the Negotiable Instrument Act and Section 482 Cr.P.C.

Section 320 Cr.P.C. - Compounding of Offences -

- 1) The offences punishable under the sections of the Indian Penal Code (45 of 1860), specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table -
- 2) The offences punishable under the Sections of the Indian Penal Code (45 of 1860), specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending be compounded by the persons mentioned in the third column of that Table -
- 3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.
- 4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.
(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil

Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.

- 5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or as the case may be, before which the appeal is to be heard.
- 6) A High Court or Court of Session acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.
- 7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.
- 8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.
- 9) No offence shall be compounded except as provided by this section.

Section 147 of the Negotiable Instrument Act :

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

Section 482 Cr.P.C. :

Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

14. I have to refer relevant portions of the compromise deed which is on the record for proper adjudication :-

7. That now the complainant -second party is ready for the settlement of the pecuniary dispute on an amount of Rs.-3,00,000/- with the First Party through his father as the First Party is languishing in jail after the judgment and order of conviction. As agreed, the First Party will

make a payment of Rs. 2 lakhs by means of a Demand draft no. 374901 of State Bank of India. The rest 1 Lakh which is already lying deposited with the Additional Court, Faizabad would be withdrawn by the Second Party. The First Party would carry out the documentation which is required for the withdrawal by the Second Party.

8. That now remains no grouse, complaintor grievance between both the parties. Both the parties are ready to get the matter settled/ quashed by a Court of Law as the dispute was personal in nature.

9. That thus the parties have amicably entered in this agreement and both parties in sound and disposing mind and under no Fear, Fraud, Influence, Coercion or under any force or compulsion or pressure have mutually agreed mentioned as under:

**NOW THE DEED OF AGREEMENT /
COMPROMISE WITNESSES AS UNDER**

- 1. That the first party is ready to pay the amount i.e. Rs.- 3,00,000/- business debt to the second party..*
- 2. That the second party also wants to settle the pecuniary dispute with the first party.*
- 3. That the second party has not any grievance against the first party*
- 4. That the dispute between the parties is private in nature.*
- 5. That it is further agreed between the parties that*

neither of the parties shall file any complaint/ suit/ petition/ FIR and/or any other proceedings before any court of law/any authority for the same offence. Both the parties undertake that there is no other complaint/ petition/ suit/ FIR pending against each other of the same dispute and if the same is found, the same compromised Agreement." shall in stand null and void and terms of this "Settlement

6. That the Second Party shall make no further complaint/ First Information Report against First Party or his family members regarding the said bounced cheques, this clause shall be an exception for any other fresh cause of action(s) or activity(s).

7. That both the Parties shall assist each other in prudently pursuing the petition to quash the judgment dated 27.11.2019 passed by Additional Court, Faizabad and subsequent judgment passed by Additional District Judge, Court 110. 10, Faizabad incriminal appeal no. 01/2020 and other subsequent proceeding (s) and shall appear in the concerned Court as and when necessary and required to record necessary statements/pleadings as per law. DIA

8. That both the parties shall have on satisfaction of aforementioned terms no further claims whatsoever against each other from this day onwards and terms of the aforementioned deed are binding on them. Any party who denies the above mentioned compromise/ agreement will be liable for legal action and claims.

9. That this compromise / agreement is being executed voluntarily and with mutual consent without any Fear,

Pressure, Force, Fraud, Undue Influence, Coercion in the presence of members of the family / relative.

15. It is well settled that inherent powers under section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. It is also well settled that if an effective alternative remedy is available, the High Court will not exercise its inherent power under this section, specially when the applicant may not have availed of that remedy.
16. Inherent powers under Section 482 of Cr.P.C. include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/s 482 of Cr.P.C. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly and with caution.
17. The High Courts in deciding matters under Section 482 should be guided by following twin objectives, as laid down in the case of *Narinder Singh vs. State of Punjab (2014) 6 SCC 466*:
 - i. Prevent abuse of the process of the court.
 - ii. Secure the ends of justice.
 - iii. To give effect to an order under the Code.
18. In the instant case, it is true that this Court had dismissed the criminal revision and upheld the conviction and sentence passed

by the court below but it cannot be lost sight of the fact that this Court has the power to intervene in exercise of the powers vested under section 482 Cr.P.C. only with a view to do the substantial justice or to avoid miscarriage and the spirit of the compromise arrived at between the parties. This is perfectly justified and legal too.

19. I have considered the judgments cited by the learned counsel for the petitioner as well as by the learned Counsel for the State and other decisions of the Hon'ble Apex Court and I do not think it necessary to enlist those decisions which are taken into consideration for the purpose of the present proceedings.
20. In the instant case, the petitioner is invoking the inherent power as vested under section 482 Cr.P.C. after the dismissal of the revision petition under section 397 Cr.P.C. read with section 401 Cr.P.C. In this circumstances, I have to examine the maintainability of the present petition under section 482 Cr.P.C. and also to examine as to whether for entertaining the aforesaid petition, any special circumstances are made out or not. The gist of the ratio is reflected in the decision of the Hon'ble Apex Court in the case of ***Rajinder Prasad vs. Bashir and Others; AIR 2001 SC 3524***. In that case, it was contended before the Apex Court that as per the earlier revision filed by the accused persons under section 397 of the Code has been rejected by the High Court vide order dated 13.05.1990, they had no right to file the petition under section 482 Cr.P.C. with the prayer for quashing the same order. While dealing with the above contention, the Apex Court observed that -

"We are of the opinion that no special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the

High Court under section 482 of the Code and the impugned order is liable to be set aside on this ground alone."

So it can be legitimately argued and inferred and held that in all cases where the petitioners are able to satisfy this court that there are special circumstances which can be clearly spelt out, subsequent application invoking inherent powers under section 482 Cr.P.C. can be moved and cannot be thrown away on the technical argument as to its sustainability.

21. In the case of **Krishan Vs. Krishnaveni, reported in (1997) 4 SCC 241**, Hon'ble the Apex Court has held that though the inherent power of the High Court is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may in its discretion prevent the abuse of process or miscarriage of justice by exercising jurisdiction under section 482 of the Code.
22. For adjudicating the instant petition, the facts as stated hereinabove are very relevant. Here, the petitioner has attempted to invoke the jurisdiction of this court vested under section 482 Cr.P.C. The embargo of sub section 6 of section 320 Cr.P.C. as pointed out by learned AGA would not come in the way so far as the relief prayed in this petition.
23. I am not in agreement that when the adjudication of a criminal offence has reached to the state of revisional level, there cannot be any compromise without permission of the court in all case including the offence punishable under 'N.I. Act' or the offence

mentioned in Table-1 (one) can be compounded only if High Court or Court of Sessions grants permission for such purpose. The Court presently, concerned with an offence punishable under 'N.I. Act'.

24. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point I can refer to the following extracts from an academic commentary [Cited from : K.N.C. Pillai, R.V. Kelkar's Criminal Procedure, 5th Edition :

"17.2 - compounding of offences - A crime is essentially a wrong against the society and the State. Therefore, any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as compoundable only with the permission of the court..."

25. Section 147 of NI Act begins with a non obstante clause and such clause is being used in a provision to communicate that the provision shall prevail despite anything to the contrary in any other or different legal provisions. So, in light of the compass provided, a dispute in the nature of complaint under section 138 of N.I. Act, can be settled by way of compromise irrespective of any other legislation including Cr.P.C. in general and section 320 (1)(2) or (6) of the Cr.P.C. in particular. The scheme of section 320 Cr.P.C. deals mainly with procedural aspects; but it simultaneously crystallizes certain enforceable rights and obligation. Hence, this provision has an element of substantive legislation and therefore, it can be said that the scheme of section 320 does not lay down only procedure; but still, the

status of the scheme remains under a general law of procedure and as per the accepted proposition of law, the special law would prevail over general law. For the sake of convenience, I would like to quote the observations of Hon'ble the Apex Court in the case of ***Municipal Corporation, Indore vs. Ratnaprabha reported in (AIR 1977 SC 308)*** which reads as under :

"As has been stated, clause (b) of section 138 of the Act provides that the annual value of any building shall "notwithstanding anything contained in any other law for the time being in force" be deemed to be the gross annual rent for which the building might "reasonably at the time of the assessment be expected to be let from year to year" While therefore, the requirement of the law is that the reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be so "notwithstanding anything contained in any other law for the time being in force". It appears to us that it would be a proper interpretation of the provisions of clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed under Section 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. This view will, in our opinion, give proper effect to the non-obstante clause in clause (b) with due regard to its other provision that the letting value should be "reasonable"

26. The expression 'special law' means a provision of law, which is not applicable generally but which applies to a particular or specific subject or class of subjects. Section 41 of Indian Penal Code stands on the same footing and defines the phrase special law. In this connection I would like to quote the well accepted proposition of law emerging from various observations made by

the Hon'ble Apex Court in different decisions as a gist of the principle and it can be summarised as under:

"When a special law or a statute is applicable to a particular subject, then the same would prevail over a general law with regard to the very subject, is the accepted principle in the field of interpretation of statute."

27. In reference to offence under section 138 of N.I. Act read with section 147 of the said Act, the parties are at liberty to compound the matter at any stage even after the dismissal of the revision application. Even a convict undergoing imprisonment with the liability to pay the amount of fine imposed by the court and/or under an obligation to pay the amount of compensation if awarded, as per the scheme of N.I. Act, can compound the matter. The complainant i.e. person or persons affected can pray to the court that the accused, on compounding of the offence may be released by invoking jurisdiction of this court under section 482 Cr.P.C. If the parties are asked to approach the Apex Court then, what will be situation, is a question which is required to be considered in the background of another accepted progressive and pragmatic principle accepted by our courts that if possible, the parties should be provided justice at the door step. The phrase "justice at the door step" has taken the court to think and reach to a conclusion that it can be considered and looked into as one of such special circumstances for the purpose of compounding the offence under section 147 of the N. I. Act.
28. It is also well settled that the operation or effect of a general Act may be curtailed by special Act even if a general Act contains a non obstante clause. But here is not a case where the language of section 320 Cr.P.C. would come in the way in recording the compromise or in compounding the offence punishable under section 138 of the N.I. Act. On the contrary provisions of

section 147 of N.I. Act though starts with a non obstante clause, is an affirmative enactment and this is possible to infer from the scheme that has overriding effect on the intention of legislature reflected in section 320 Cr.P.C.

29. Merely because the litigation has reached to a revisional stage or that even beyond that stage, the nature and character of the offence would not change automatically and it would be wrong to hold that at revisional stage, the nature of offence punishable under Section 138 of the N.I. Act should be treated as if the same is falling under table-II of Section 320 IPC. I would like to reproduce some part of the statement of objects and reasons of the Negotiable Instruments (Amendment & Miscellaneous Provisions) Act, 2002 :

"The Negotiable Instrument Act 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instrument Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instrument Act, 1981, namely Section 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.

2. A large number of cases are reported to be pending under Sections 138 and 142 of the Negotiable Instruments Act in various courts in the country. Keeping in view the large number of complaints under the said Act, pending in various courts, a Working Group was constituted to

review Section 138 of the Negotiable Instruments Act, 181 and make recommendations as to what changes were needed to effectively achieve the purpose of that Section.

3.

4. Keeping in view the recommendations of the Standing Committee on finance and other R/SCR.A/2491/2018 ORDER representations, it has been decided to bring out, inter alia the following amendments in the Negotiable Instrument Act 1881, namely.

(i) xxxxxx

(ii) xxxxxx

(iii) xxxxxx

(iv) to prescribe procedure for dispensing with preliminary evidence of the complainant.

(v) xxxxxx

(vi) xxxxx

(vii) to make the offences under the Act compoundable.

5. xxxxxx

6. *The Bill seeks to achieve the above objects."*

30. In a commentary the following observations have been made with regard to offence punishable under section 138 of the N.I. Act. [Cited from : Arun Mohan, Some thoughts towards law reforms on the topic of Section 138 Negotiable Instrument Act - Tackling an avalanche of cases] :

"... .. Unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of

the cheque.

If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

31. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect
32. So the intention of the legislature and object of enacting "Banking", Public Financial Institutions and the Negotiable Instrument Laws (Amended Act) 1988 and subsequent enactment, i.e., Negotiable Instruments (Amendment & Miscellaneous Provisions Act 2002 leads this Court to a conclusion that the offence made punishable under Section 138 of N.I. Act is not only an offence qua property but it is also of the nature of an economic offence, though not covered in the list of statutes enacted in reference to Section 468 of Cr.P.C. Thus, the parties, in reference to offence under Section 138 N.I. Act read with Section 147 of the said Act are at liberty to compound the matter at any stage even after the dismissal of the application.
33. In the instant case, the problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute, furthermore, the arguments on behalf of the opposite parties on the fact that unlike Section 320 Cr.P.C., Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court.

34. I am also conscious of the view that judicial endorsement of the above quoted guidelines as given in the case of **Damodar S. Prabhu (supra)** could be seen as an act of judicial law making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. I have already explained that the scheme contemplated under Section 320 of the Cr.P.C. cannot be followed in the strict sense.
35. In view of the aforesaid discussion, the parties, in reference to offence under Section 138 N.I. Act read with Section 147 of the said Act are at liberty to compound the matter at any stage. The complainant i.e. the person or persons affected can pray to the court that the accused, on compounding of the offence may be released by invoking jurisdiction of this Court under Section 482 Cr.P.C. read with Article 226 of the Constitution of India.
36. Generally, the powers available under Section 482 of the Code would not have been exercised when a statutory remedy under the law is available, however considering the peculiar set of facts and circumstances it would not be in the interest of justice to relegate the parties to appellate court. Additionally when both the parties have invoked the jurisdiction of this Court and there is no bar on exercise of powers and the inherent powers of this court can always be invoked for imparting justice and bringing a quietus to the issue between the parties.
37. As discussed above, the court is inclined to hold accordingly only because there is no formal embargo in section 147 of the N.I. Act. This principle would not help any convict in any other law where other applicable independent provisions are existing as the offence punishable under section 138 of the N.I. Act is

distinctly different from the normal offences made punishable under Chapter XVII of IPC (i.e. the offences qua property).

38. In view of the aforesaid discussions the answers of question referred in Paragraph 12 of the judgment is accordingly.
39. In view of the observations and in view of the guidelines as laid down in the case of **Damodar S. Prabhu (Supra)** and taking into account the fact that the parties have settled the dispute amicably, in view of this court the compounding of the offence is required to be permitted.
40. Accordingly, the present petition under section 482 Cr.P.C. is allowed in terms of the compromise arrived at between the parties to this litigation out of court. The conviction and sentence under Section 138 of the N.I. Act 1981 in Complaint Case No.515 of 2016 (Abhay Singh vs. Jai Construction Co. and another) stands annulled as this court intends, otherwise to secure the ends of justice as provided under section 482 Cr.P.C. The petitioner shall be treated as acquitted on account of compounding of the offence with the complainant/person affected. The petitioner shall pay costs of Rs.5000/- (Rs. Five thousand Only) to the respondent - State. Further, the amount of Rupees one lakh so deposited by the petitioner, as awarded, before the court below while filing the appeal shall be released in favour of opposite party no.2.

Order Date :- 13.08.2021.

VNP/-

[**Chandra Dhari Singh, J**]