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The Concept of ‘Compromise’ in Criminal Law

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As the nation progresses towards economic growth, rising commercial activities, trade, technological advancements, new government policies and regulations, and many such activities attract the need for a solid and efficient legal infrastructure. As society progresses, crimes follow because of people’s increasing demands. Economic development shall involve some proportion of financial fraud, corruption, etc. Technological advancements sometimes lead to the theft of data and misuse of private data and many such things. Provisions of laws are there to counteract such anti-social activities and provide justice to the victim and punish the wrongdoers. But sometimes, the wrong done is not that grave or heinous to attract a lengthy litigation battle. Quick settlement is the way out of the dispute so that society continues to progress and the burden on the courts is less to focus on other serious matters which require utmost importance. Thus, compromise is crucial in quickly settling civil and criminal disputes. This article elucidates the compounding of offenses as mentioned in section 320 of the criminal procedure code, 1973, and all such instances where this compounding is valid and its procedure.

Keywords: *compromise, settlement, criminal law, compounding.*

INTRODUCTION

Compromise generally means a settlement between two people or groups in which both sides give up some of the things they want so that everyone is benefitted and is happy. The dictionary meaning of compromise is *an agreement reached by each side making concessions*. When we look at

issues of law ipso facto, there are certain situations where both parties in a legal dispute have decided to settle their disputes mutually in harmony rather than dragging themselves into litigation. In the case of *Bimal Kumar and Anr*, the word 'compromise' means a settlement of differences by mutual consent was coined.¹ It was stated that "*The cavil between the parties is given a decent burial. A compromise arrived at by the parties puts an end to the litigation battle. Sometimes the parties feel it is an unfortunate bitter struggle and allow good sense to resolve the dispute. In certain cases, by the intervention of well-wishers, the conciliatory process commences, and eventually, by consensus and concurrence, rights get concretized. A reciprocal settlement with a clear mind is regarded as noble.*" A compromise is always bilateral and means mutual adjustment. 'Settlement' means termination of legal proceedings by mutual consent.²

The parties can make compromises in civil as well as criminal disputes. In case of a civil dispute, it is upon the discretion of the parties to settle the matter mutually and compromise it with the aid of any lawfully binding agreement or in writing signed by the petitioners/respondents, plaintiff/defendants therein. Order 23 Rules 1³, 2⁴ and 4⁵ deals with the withdrawal of suits and Order 23 Rules 3⁶ & 3B⁷ deals with the compromise of suits. But compromise is not an easy remedy to escape the punishments in Criminal Law. Crimes threaten society, and the perpetrators should not walk freely after committing crimes. Though some minor offenses can settle by the parties outside court. Still, significant crimes like theft, cheating, voluntarily causing hurt, wrongfully restraining or confining a person, etc., all are crimes that affect people. But still, the chance of settling the dispute is given to the parties under the supervision of Magistrates and Judges, respectively.

Section 320 of the CrPC⁸ discusses the 'compounding of offenses' which enlists the offenses punishable under the Indian Penal Code⁹. Let us understand what compounding means.

¹ *Bimal Kumar and Anr v Shakuntala Debi and Ors* (2012) 3 SCC 548

² *State of Punjab v Ganpat Raj* (2006) 8 SCC 364

³ Civil Procedure Code 1908, Or 23 r 1

⁴ Civil Procedure Code 1908, Or 23 r 2

⁵ Civil Procedure Code 1908, Or 23 r 4

⁶ Civil Procedure Code 1908, Or 23 r 3

⁷ Civil Procedure Code 1908, Or 23 r 3B

⁸ Criminal Procedure Code 1973, s 320

⁹ Indian Penal Code 1860

‘Compounding of an offense signifies that the person wronged has received some gratification, not necessarily of a pecuniary character, to act as an inducement for his desiring to abstain from a prosecution.’¹⁰

Section 320¹¹ relates to the compounding of offenses punishable under the sections of the Indian Penal Code as specified in the table provided in sec 320 of CrPC. Sec 320 consists of Sec 320(1) and 320(2). Sec 320(1) tells about those offenses which are compoundable by the parties themselves **without the court’s permission**, & **Sec 320(2) tells us about those offenses which are compoundable with the court’s permission**. Several amendments took place to incorporate more sections of IPC under the purview of compounding offenses. As per the table in sec 320, only the person mentioned in the third column can legally compound an offense. For example, if A commits an offense chargeable u/s 417 of IPC¹² which deals with ‘**Cheating**’, then as per the third column, the person who has been cheated (B) only can compromise with A and settle the dispute without dragging it long in court.

SIGNIFICANCE OF SEC 320 CrPC

The provisions of section 320 CrPC serve as a path for an amicable settlement of disputes relating to criminal offenses reasonably and efficiently. Not only does the provision promotes compromise/ reconciliation, but it also respects the gravity of certain crimes and the need for appropriate punishment keeping in mind the public and society at large. Section 320 draws a fine line between offenses that can be compromised and those that require proper prosecution followed by punishment. This is solely to ensure that the principles of justice and the welfare of society are upheld and balance the requirement for resolution with the need for maintaining law and order. Section 320 CrPC¹³ paves the way for reducing the burden on the criminal justice system by quick disposal of criminal cases and creating an opportunity for the wrongdoer to reform and make amends with the victims for their actions.

¹⁰ Justice Chandramauli Kumar Prasad & Namit Saxena, *Ratanlal & Dhirajlal’s The Code of Criminal Procedure* (21st edn, LexisNexis 2018)

¹¹ Criminal Procedure Code 1973, s 320

¹² Indian Penal Code 1860, s 417

¹³ Criminal Procedure Code 1973, s 320

WHEN CAN A COMPROMISE BE MADE u/s 320 CrPC?

The Court can execute the compromise in a dispute before a sentence is pronounced, even while the magistrate delivers a judgment. A magistrate cannot allow a compromise after the case record is called for under section 397 CrPC¹⁴, intending to transfer the case because his jurisdiction to deal with the case ends after the order for calling the records gets passed. An offense can compound only when the proceeding is ongoing. In an offense enlisted in Sec 320(2)¹⁵, an application for the compounding of the crime filed after the appeal gets disposed of is not maintainable because no proceeding is pending. The word 'pending' indicates that "an application for compounding the offense must be made in a pending proceeding. Nothing is pending once the appeal has been finally disposed of; therefore, an application under Section 320 of the CrPC cannot be entertained."¹⁶

A compromise settlement between the parties to a compoundable offense as soon as made is considered complete and has the effect of acquittal even if one of the parties subsequently resiles from the compromise. A compromise in case of compoundable offenses divests the Magistrate of his jurisdiction to try the case. Where a party to the compromise later denies having entered into any such arrangement, the court must hold an inquiry, determine if the compromise is voluntary, and then compound the offense. If it proved that the parties signed the documents of compromise and understood the document's content, then it is incompetent for either of the parties to withdraw from it.

COMPOUNDING u/s 320 (1) & 320(2)

As stated earlier, approval of the court is not necessary for compounding the offenses cited under this sec 320(1).¹⁷ When parties to a compoundable offense compound it and produce it in writing, signed by both the parties before the court, then the court is bound to act upon it. Once the parties have arrived at a valid compromise agreement, either party is incompetent to

¹⁴ Criminal Procedure Code 1973, s 397

¹⁵ Criminal Procedure Code 1973, s 320(2)

¹⁶ *Chhote Singh & Ors v State of U P* (1980) Cr LJ 583

¹⁷ Criminal Procedure Code 1973, s 320(1)

withdraw from it. Breach of the terms of the agreement may give rise to other remedies, but there can be no withdrawal. Even after the framing of charges, compoundable offenses can get compounded. Under sec. 320(1), once the parties have voluntarily reached a compromise, the magistrate has nothing more to do except to record a judgment of acquittal of the accused.

In the case of offenses u/s 320(2),¹⁸ the magistrate performs his judicial duty of deciding whether the parties should be permitted to compromise in the interest of justice. Unless and until the court grants its sanction, the compromise between the parties outside the court has no legal recognition, and cognizance by any court dealing with the offense cannot be considered valid. In cases where the complainants have compromised, received compensation, and no hard feelings are left in their hearts, the court would grant permission to compound the offense.

In **Ram Shankar v State of UP**¹⁹, the court had converted the charge under which the appellant was charged, from sections 307 - 325, r.w. sec 34²⁰ IPC. The parties had settled their dispute and had filed for an application for compounding the offence whereby the court accepted the application and converted the appellant's conviction to acquittal.

In **Dasan v State of Kerala**²¹, the court altered the conviction to sec. 325, and as the case was 18 years old, the court granted the permission to compound the offense. The appellant was charged under section 326²² which is non-compoundable in nature. The counsel for the appellant contended that there was no sufficient evidence to prove that the appellant had used a deadly weapon. Evidence on record showed the usage of a stick. After scrutinizing all the facts, the court converted the appellant's charge from sections 326 - 325, i.e. voluntarily causing grievous hurt and is compoundable by the person to whom the hurt is caused. The court directed the offence to be compounded.

¹⁸ Criminal Procedure Code 1973, s 320(2)

¹⁹ *Ram Shankar v State of UP* (1982) 3 SCC 388 (1)

²⁰ Indian Penal Code 1860, s 34

²¹ *Dasan v State of Kerala* (2014) SC 1437

²² Indian Penal Code 1860, s 326

THE PROCESS OF COMPOUNDING

Before delving into the compounding process, one must know the term 'composition' w.r.t compounding pending investigation. A composition is an "arrangement whereby there is the settlement of the differences between the injured party and the person against whom the complaint lodged. That the composition shall be in writing is not necessary, it can be in oral form. If both the parties agree that there has been compromise, then the court has to dispose of the case in terms of that compromise, and the petitioner is to be acquitted."²³

If the investigation is pending, there is the composition of offenses u/s 320(1)²⁴ & 320 (2)²⁵ of CrPC. Parties have the option of either going to the court or the police. The victim (person in the third column of sec 320) can file a written composition. If the parties wish to settle the dispute voluntarily, the accused and the victim can file a joint application. The police, after that, must verify the composition's truth, genuineness, and voluntariness. As per sec. 161²⁶, the statement of the victim is recorded. Suppose police are satisfied that the composition is voluntary, genuine, and willing, which can be accepted and acted upon. In that case, the police can, if the offense falls within sec. 320(1), file a negative final report u/s 173²⁷ CrPC and submit it to the magistrate. The magistrate may accept the final report upon recommendation and drop further proceedings if the offense is compounded. The magistrate can accept the composition after sending the de facto complainant a notice.

If the offense falls under the ambit of sec 320(2) and parties are willing to compromise the dispute, they must file a joint application and follow the abovementioned process. The police officer, if satisfied with the composition, must submit a report to the court, seeking its orders for granting leave. The magistrate shall order notice to the victim and decide whether leave u/s 320(2) CrPC shall be granted. After that, orders shall be passed by the court. In both scenarios,

²³ Justice Chandramauli Kumar Prasad & Namit Saxena (n 10)

²⁴ Criminal Procedure Code 1973, s 320(1)

²⁵ Criminal Procedure Code 1973, s 320(2)

²⁶ Criminal Procedure Code 1973, s 161

²⁷ Criminal Procedure Code 1973, s 173

i.e. sections 320(1) and 320(2) depending upon the court's orders, the investigation shall be closed or continued by the investigating officer.

For example, in **Naresh Chandra Jauhari v State of UP**,²⁸ the offense committed was u/s 352 IPC²⁹. It was observed in that case, *"It means that there had been a compromise in this case before the District Magistrate after lodging of the report. The legal position is very clear. An offense under S. 352 of the IPC is compoundable even without the permission of the Court. A compromise is an arrangement whereby there is a settlement of the differences between the injured party and the person against whom the complaint is made. The compromise doesn't need to be in writing; it may be oral. If both parties agree that there has been a compromise, then the Court has to dispose of the case in terms of that compromise, and the petitioner is to be acquitted. If, on the other hand, parties differ, the Court has to call upon them to lead evidence and then record a finding on such evidence whether the allegations regarding the compromise are true or not."* In conclusion, Allahabad HC dismissed the case based on the compromise between the parties, and the petitioner's revision was allowed.

SECTION 498A IPC & ITS COMPOUNDING

Section 498A³⁰ in the IPC was introduced later as chapter XX-A to deal with crimes where women were subject to torture and harassment at the hands of their husbands and husbands' families/ relatives. The legislature added Sec 498A to prevent such activities and penalize the husband or his family who tortures the wife to coerce her relatives to satisfy the illegal dowry demands. An offense u/s 498A³¹ is non-compoundable, and the court cannot grant any permission to compound the same except in some situations.

In **Dharmal Singh Jadon & Ors v State of MP & Anr**,³² the Madhya Pradesh High Court's Gwalior Bench had dismissed the application for compounding offense ipso facto based on the compromise between the parties for charges u/s sections 307³³ and 498-A³⁴. The court observed

²⁸ *Naresh Chandra Jauhari v State of UP* (1988) All LJ 304

²⁹ Indian Penal Code 1860, s 352

³⁰ Indian Penal Code 1860, s 498A

³¹ *Ibid*

³² *Dharmal Singh Jadon & Ors v State of MP & Anr* (2021) CrI P No 5637/2021

³³ Indian Penal Code 1860, s 307

³⁴ Indian Penal Code 1860, s 498A

that these allegations were severe because, in this case, the mother-in-law and sister-in-law with the complainant's husband had mercilessly beaten the wife, intending to kill her, and tied a knot in her neck. Based on the gravity of the offense, the court found it suitable not to quash the FIR only on the mere basis of the settlement between the parties.

In **BS Joshi v State of Haryana**³⁵, the Supreme Court had observed that the purpose of introducing a new chapter (XX-A) in the Indian Penal Code, whereby sec 498-A was inserted, was to prevent any sort of torture to a woman by her husband or his relatives. The section was inserted to hold such husbands and their relatives liable for their acts and punish those who torture the wives by coercing them to satisfy their unlawful dowry demands. The court while iterating the powers under section 482 CrPC³⁶ had stated that "*The hyper-technical view would be counterproductive and act against the interests of women and against the object to which this provision was added. There is every likelihood that the non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Penal Code, 1860.*" This observation deduces that the High Court, exercising its inherent powers u/s 482 CrPC, can quash criminal proceedings or FIR or complaint u/s 498A IPC. Section 320 CrPC³⁷ does not limit or curtail the powers of the High Court u/s 482 CrPC. In the BS Joshi case, the HC set aside the impugned judgment of the lower court and quashed the FIR.

In the **State of Rajasthan v Gopal Lal**³⁸, a criminal case u/s 498A IPC was registered against Gopal Lal. After an investigation, the police found that husband Gopal Lal and his family had oppressed the wife. The aggrieved wife later had moved a petition before the Judicial Magistrate stating that she had compromised the matter with the respondents and was now living amicably with her husband, Gopal Lal. She prayed for the allowance of compounding of offense. Ld. After hearing the parties, Magistrate accepted the compromise and acquitted the respondent u/s 498A IPC. Aggrieved by this, the state filed an appeal stating that the Ld. magistrate below could not have allowed such compounding as per the provisions of sec 320 CrPC. After scrutinizing the

³⁵ *BS Joshi v State of Haryana* (2003) SC 1386

³⁶ Criminal Procedure Code 1973, s 482

³⁷ Criminal Procedure Code 1973, s 320

³⁸ *State of Rajasthan v Gopal Lal* (1992) Cri LJ 273

facts, the supreme court observed that it was a solitary case between the parties, which they had compromised. It was held, “Where the spouses have started living amicably, and the wife has condoned the offense of matrimonial cruelty, the magistrate acted wisely in permitting the parties to compound the offense u/s 498A IPC.” The court dismissed the State’s appeal and upheld the Ld. Magistrate’s decision.

Though there is provision for settlement, the ultimate decision lies at the court’s mercy. If the FIR filed is for an offense of 498-A IPC and the allegation is of using abusive language only, the court, if satisfied with the settlement and the facts, can allow for quashing the FIR and compounding the offense. To summarize, even though sec 498A IPC is non-compoundable, in cases where there has been a compromise between the spouses, and both have decided to get separated or consented to stay together mutually, the court can quash the proceeding in both scenarios. “Where the wife had filed proceedings against the husband and his relatives u/s 498A IPC and both the spouses had agreed for mutual divorce, criminal proceedings u/s 498A IPC, on the application filed by the wife can be quashed.”³⁹

SECTION 320 & IT’S NEXUS WITH SEC 482 CRPC

Section 482 CrPC states, “Saving of inherent powers of High Court to pass 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.”⁴⁰ In exercising its inherent power, the High Court can quash criminal proceedings, FIR or complaints. Section 320 CrPC neither curtails nor affect the powers of HC u/s 482 CrPC. The emphasis is on the exercise of its inherent jurisdiction and is different and is unlike the power given to the criminal court for compounding the offenses u/s 320 CrPC. The ambit and scope of Sec. 482 have been examined in a catena of Supreme Court decisions and those of other High Courts to determine the position of Sec. 482. Though the ambit of sec 482 is broad without any statutory limitation, it has to be exercised within the guidelines stated in the provision itself, i.e. to secure the ends of justice and to prevent abuse of the process of any court in criminal cases where the offender and victim have compromised and settled their

³⁹ Justice Chandramauli Kumar Prasad & Namit Saxena (n 10)

⁴⁰ Criminal Procedure Code 1973, s 482

dispute in such cases the power of High court to quash the criminal proceeding, FIR or complaint is derived from section 482. No category of cases is prescribed for it because it depends on the facts and circumstances of each case. It doesn't mean that the parties can execute compromise in any offenses u/s 320 and the high court can allow such settlement u/s 420. In cases like dacoity, rape, murder, and all such crimes which are not private and in which the nature of the offense is heinous and causes mental depravity, trauma, harassment, etc. in such cases, even though the parties may have settled the dispute but it cannot be quashed by the High court due its serious nature and impact on society.

In cases where the wrongful act done is private or personal, like offenses arising from commercial, financial, civil, partnership or similar transactions, in these type of cases High Court may quash the criminal proceedings if, in its opinion, because of the settlement/ compromise between the offender and victim, the likelihood of conviction is bleak and continuation of such criminal proceedings would only cause oppression and prejudice to the accused despite the full settlement of the dispute between the concerned parties. To prevent such grave injustice to the accused/offender, the High Court must consider whether by the continuation of the proceedings interest of justice is met or whether the continuation would lead to abuse of the process of law despite the compromise. In the landmark case of *Gian Singh v the State of Punjab*, the Apex Court had observed the difference between Quashing criminal proceedings on the ground of settlement and compounding of the offence. They remarked this difference as different and not interchangeable. They observed that, *"Strictly speaking, the power of compounding offenses given to a court under Section 320 CrPC is materially different from the quashing of criminal proceedings by the High Court in the exercise of its inherent jurisdiction. In compounding of offenses, the power of a criminal court is circumscribed by the provisions contained in Section 320 CrPC, and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offense or criminal proceeding or criminal complaint under Section 482 CrPC is guided by the material on record as to whether the ends of justice would justify such exercise of power. However, the ultimate consequence may be acquittal or dismissal of indictment."* This means that during the compounding of offence, the power of the criminal court is limited only by the provisions mentioned in section 320 of CrPC and gives judgement and orders based on

those only. On the other hand, while exercising its power u/s 482 CrPC, the High Court takes into consideration all the materials on record and tries the case by all means just to secure the ends of justice. The court may or may not compound the offence even if it's compoundable in nature. Thus, in my opinion, as per the above-discussed provisions and its meaning, Section 482 CrPC acts as a safeguard granted to the High Court to not sanction any offence as compoundable in respective cases. There can be hidden coerced agreement for compromise, or the offence involving a higher societal impact and to secure the ends of justice, the judges of the High Court can exercise their power under section 482. They must check the gravity of the offence committed, and based on that pronouns their verdict.

CONCLUSION

We can conclude that section 320 doesn't let all perpetrators off the hook of justice. For those crimes that threaten society at large, the accused are not allowed to compromise, and the court doesn't compound those offenses. In cases of 498-A IPC, the court needs to scrutinize the facts with utmost care because there are chances of false accusations against the husband's family. As the law is there for the betterment of society, people tend to mend it in their ways to oppress others. Section 320 is a tool used to settle disputes amicably without dragging them into lengthy litigation, which costs the courts and parties time and energy. The courts need to be vigilant regarding such circumstances and tread judiciously.