

COMPOUNDING OF OFFENCES IN CRIMINAL TRIAL

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Compounding has been described in Webster's Dictionary. "In civil cases, as settlement by agreed payment. In criminal trials, compound a felony means to avoid prosecuting a criminal for private motive." It has been defined further in (1882-1896) / UBR 219 "to withdraw for a consideration and not merely to withdraw." Similar to compounding some times compromise word is used. It has been defined in Webster's Dictionary "as a method of reaching agreement in a dispute by which each party surrenders some thing that it wants. An agreement so reached is compounding."

Likewise to the British Common Law all the three Cr. P.C.'s made, so far, in India were having provision for compounding of offences. Cr. P.C. of 1862 was having similar provision as was found in Sec. 345 of Cr. P.C. of 1898 with some nominal amendments but the present Cr. P.C. of 1973 made some major changes. In present provision of compounding U/s 320 of Cr. P.C., these changes are as under: (i) Sec. 345, 411, 379 of I.P.C. have been made to be compoundable offence with certain limitations. (ii) sub-sec. 4 of 320 has been added with the effect that after the death of party, the legal representatives of deceased complainant or injured and guardian in the case of minor under 18 years of age or and idiot may with the permission of court, compound the criminal trials. (iii) New sub-sec. 6 & 7 have been added, which have provided that a High Court or Court of sessions may allow compounding in the course of hearing or revision also. Although there was provision for compounding during appeal in old Cr. P.C. and it has also found place in the present one. One more important provision has been given i.e. no offence can be compounded except as provided by Sec. 320 Cr. P.C. Now by this provision it has been made clear that the High Court or any other court may not exercise its inherent power to compound any offence, because 320 (9) has expressly prohibited to compound any offence except under section 320, with these major changes in the now Cr. P.C. it stepped in the shoes of the earlier code particularly with regard to section 320 Cr. P.C.

The Policy of legislatures adopted in this section is that in the case of minor offence, where the interest of the public are not vitally affected the complainants should be permitted to come to terms with the party against whom he complains.

The Principle appears to be that wrongs of certain classes which affect mainly a person in his individual capacity or character may be sufficiently redressed by compositions. Actually legislature has laid down in this section the test of determining the classes of offences which concern individual only as distinguished from these which have reference to the interest of the state and court of law can not go beyond that test and substitute for it one of their own.

Section 320 of Cr. P.C. has provided on celebrate list of offences which are compoundable directly and some of them may be compounded with the permission of the court even compounding is possible by the guardian and legal representative of minor, indigent and deceased complainant or injured with the permission of the court. Even compounding has been permitted during the hearing of Appeal and revision in High Court or Supreme Court, but if the accused is previous convict and he is liable to enhanced or different kinds of punishment from the ordinary punishment then compounding is not permitted. It has been further mentioned in this section that the effect of compounding shall be deemed to be the acquittal of the case. It has been further warned that no compounding is permissible except under section 320 Cr. P.C. it is the bone of contention for this article, because once it has been said that no compounding is possible in offences not mentioned u/s 320 Cr. P.C. then how the compounding is possible in non compoundable offences it shall be illegal and the withdrawal is no also possible, here I submit that it is against public policy to compound a non-compoundable offence as it is in contravention of the law of land. It is also the duty of criminal court of the refuse to allow the withdrawal of the prosecution in non- compoundable offences. Here it is noteworthy to say that the offence being not compoundable, must be apparently on the face of the record or after the evidence of prosecution] if required for that very purpose by courts.

The compounding of the offence signifies that the person against whom the offence has been committed has received some gratification, to act as an inducement for his desiring to abstain from a prosecution. It has been held in the cases reported in A.I.R. 1971 Goa 46 and 1966 Cr. L.J. 366. If the complainant receives some rupees as consideration of compromise, the compromise and the receipt of the amount is legal and valid consideration. Although monetary consideration is not necessary.

Allahabad High Court full bench in 1972 overruling 1968 Cr. L.J. 1342 Allahabad held (1972 Cr. L.J. Page 666) that an offence punishable U/s 323 read with 149 of I.P.C. is an offence distinct from mere 323 of I.P.C. hence not compoundable likewise in A.I.R. 1970 Allahabad 235,

it was held that offence U/s 147 is not compoundable, hence, can not be compounded. The supreme court in A.I.R. 1973 SC 84 said that an indivisible permission to compound a compoundable and non compoundable offence is totally invalid. Compounding without permission of the court requires only the verification of the compromise whether it is duly executed or not, but otherwise when the permission is must, it must be obtained before filing a compromise in court and such permission can only be granted when the prosecution is pending in court, it is not so pending then no permission can be granted and if it is granted it without jurisdiction and illegal.

A Magistrate ought not to permit an offence to be compounded till he is satisfied that such permission can be granted. It is his discretion if after filing of compromise complainant retract from compromise or it is found that some of the offences or all of them are non-compoundable or there are other valid reasons for not granting permission then it shall be rejected. Now it is thought that in non-compoundable offences, criminal proceedings can not be quashed, if an order of acquittal has been obtained on an invalid compromise (in non-compoundable offences) then the order of acquittal shall be set aside (A.I.R. 1973 SC 84). Compromise once affected can not be withdrawn but it should be legal and only according to Sec. 320 of Cr. P.C. If the criminal court is set in motion by the issue of process in non-complainant to carry his prosecution upto the end of the case. The recent trend of pronouncements has also affirmed this settled practice and Law. Supreme Court in Ramesh Kumar V/s Raj Kumar (A.I.R. 1984 S.C. 1029) reversed the order of High Court and directed the matter for re-hearing, when the High Court quashed the conviction of the accused U/s 302 of I.P.C. on the ground that during appeal, some kind of arrangement has taken place on which accused gifted some of his land to victim's widow. Supreme Court did not agree with the order of High court and observed that the "Court are meant to dispense justice and not to dispense with justice. In A.I.R. 1980 SC 1200 (Rajendra Singh V/s State) accused was facing trial U/s 325/452 I.P.C. He was convicted and during appeal parties entered into compromise, upon it, offence under section 325 was compounded. But unfortunately 452 of I.P.C. was not compoundable. Hence, the Court under compulsion, reduced his conviction already undergone by him in jail. Similarly in Abdul Sattar V/s State of U.P. (A.I.R.) 1981 SC 1775). Supreme Court compounded the offence under section 325 of I.P.C. on the basis of affidavit of complainant but his conviction under section 120, 121 of Railways Act was maintained with heavy heart by the court. In S.S.C. (Criminal) 1983 page 60 & page 48

(Ram Sankar V/s State of U.P. and Moinuddin V/s State of U.P.) the court converted non-compoundable offence in compoundable in view of compromise and matter was allowed to be compounded. This trend shows the sympathetic attitude of the court towards the compounding of the offences, and the settlement of dispute by agreement of compromise. We have seen in aforesaid cases, the High Court of land landed support to compounding factors. But the limitations of section 320 of Cr. P.C. has compelled the court not to pass suitable orders suiting the parties. The court either reduced the conviction to the period already wrong one by him in Jail or altered the charge of non-compoundable offence to one compoundable and then only the accused was released on the basis of compromise. I do not think that this practice is not good one but the court is bound to accept this practice. One more practical is also prevailing that is. In case of compromise between parties compromise is accepted in compoundable offence while he prosecution witnesses are declared hostile or they do not support the prosecution case and it is done so cleverly that the witnesses cannot be prosecuted for perjury and the courts feel themselves obliged to acquit. In these circumstances recently Allahabad High Court took view that In offence of 323*/147 I.P.C. If compromise takes effect, then. The entire case may be compounded because section 147 I.P.C. is not the substantive offence hence it was concluded that if substantive offence is compoundable then other ancillary offences may be compounded even if they are not compoundable. Now is very vague and cumbersome test that which offence are substantive and which are ancillary. It may create chaos but it is correct and easy way for the early disposal of the cases. Where the parties do not want to contest. another way has been opened by our supreme court in the case of Mahesh Chandr V/s State of Rajasthan (S.C. Ruling 1989 P.188). In this case accused persons were convicted U/s 307 I.P.C. which was not a non-compoundable offence. There was also a counter case arising out of the same transaction later on the parties have come to terms and they wanted to offence compounded. The Supreme court directed to Session Judge to accord permission to compound the offence after being satisfied with the compromise agreed upon. In this case the court relied upon its early judgment of Suresh Baboo V/s State of U.P. 1947 (2) JT (SC) 361 in which permission to compound in non-compoundable offence was granted.

Looking into the judgments of Allahabad High Court and Supreme Court. The Court may grant permission in non-compoundable offences, also, if thinks fit and Court has not to wait for procedural formalities as required under law. This new practice is a step in advancement of

social justice and human rights. Because now the parties have not to wait for a longer time where compromise has taken affect marely because the offence are not compoundable. But sub-section (9) of 320 Gr. P.C. in still a hurdle in this field.

I have to submit that Cr. P.C. May be amended suitablely in the light of these judgments and a fixed policy should be made to liberalize the compounding of offences on the basic of two facts (i) will of the parties and (ii) the permission of the court in all kinds of criminal prosecution except offences exclusively against state or other heinous offences as the legislature thinks fit so that the law can keep pace with the society now a days.