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**COMPOUNDING OF NON-COMPOUNDABLE OFFENCES:  
PRAGMATIC WAY OF JUDICIARY**- Dr. Krishna Murari Yadav<sup>1</sup>**Abstract**

Offences have been divided into many categories on different grounds. One of the grounds is a compromise of offences. Based on compromise, offences can be divided into compoundable and non-compoundable offences. Compoundable offences can be further divided into two parts, i.e., compromise without permission of the court, and compromise with the permission of the court. Section 320 (1) & (2) of the Code of Criminal Procedure, 1973 contains a list of such offences. Non-compoundable offences cannot be compromised. But High Courts and Supreme Court by using their inherent powers allowed compromise in a few non-compoundable offences. These Courts have developed guidelines regarding a compromise of non-compoundable offences. The application of these guidelines has created uncertainties. Parliament must stop these uncertainties. The researcher will discuss the laws, cases and reports relating to compromise in non-compoundable offences and its application. He will follow doctrinal research for writing this research paper.

**Keywords**

Inherent power, Compoundable offence, Non-compoundable offence, Consent, Rape.

**Object of Research**

There are uncertainties in the application of section 482. Courts, in some cases, allowed compromise in non-compoundable offences and, in some cases, disallowed compromise in non-compoundable cases. The purpose of research is to find out the reasons & ratio of conflicting

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judgments and give suitable suggestions to parliament and legislative bodies to end the uncertainty. Another purpose of the research is to create awareness of the application of sections 320 & 482 of the CrPC and Article 142 of the Constitution of India.

### **(1) Introduction**

Compounding is a process through which the offender and the victim agree to put an end to the tension arising out of the criminal activity.<sup>2</sup> A compromise reduces the burden of the court and brings amicable settlement of disputes. Section 320 of the CrPC, 1973 is part material to section 345 of the Code of Criminal Procedure, 1898 (in short 'old CrPC').<sup>3</sup> Section 320 of the Code of Criminal Procedure, 1973 (in short 'the CrPC') contains categories of offences punishable under the Indian Penal Code, 1860 (in short 'the IPC'), which are compoundable with or without permission of the Court. Table of section 320 (1) contains 43 sections of the IPC which can be compromised without permission of the court. The third column of this table contains 39 categories of persons who are allowed to compromise. These offences are comparatively non-serious. Table of section 320 (2) contains 13 sections of the IPC which may be compromised with permission of the court before which case is pending. The third column of this table contains 13 categories of persons who are allowed to compromise. Section 320 (3) is an extension of section 320 (1) & (2). It covers abetment, attempt and persons who are jointly liable under section 34 or section 149 of the IPC. Offences cannot be compromised which are not compoundable either under sub-section (1) or sub-section (2) of section 320.<sup>4</sup>

The idea of division of offences into compoundable and non-compoundable is based on the seriousness of offences. Compoundable offences can further be divided into two categories. These are – (1) compoundable offences without permission of the Court,<sup>5</sup> and (2) compoundable offences with permission of the Court.<sup>6</sup> Section 320 deals with three types of offences for compromise –

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<sup>2</sup> Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, Vol. 1, (2003), Para 6.7.13.

<sup>3</sup> P.R. Thakur, 'Compounding a Non-compoundable Offence: Judicial Pragmatism: Neither Activism Nor Absolutism', 39 *JILI* 440 (1997).

<sup>4</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), section 320 (9).

<sup>5</sup>*Id.*, section 320 (1).

<sup>6</sup>*Id.*, section 320 (2).

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1. Section 320 (1) contains compoundable offences without permission of the Court. This is a lesser serious offence. It contains 43 sections of the IPC. Theft punishable under section 379 is the best example of this.
2. Section 320 (2) contains compoundable offences with permission of the Court. This is a more serious offence. It contains 13 sections of the IPC. Theft committed by a clerk or servant is the best example of this. Causing miscarriage and breach of trust are other examples of this provision.
3. Section 320 (9) says that offences other than those mentioned under section 320 (1) and section 320 (2) cannot be committed. The purpose of this provision is to prohibit the compromise of serious and heinous offences. This is the gravest form of offence. Murder, abetment to suicide, attempt to murder, rape, dacoity, cruelty caused by husband and his relative etc are examples of this.

The effect of compromise is acquittal.<sup>7</sup> If there is no pending case, section 320 will not be applied. Once an appeal has been finally decided, section 320 will not be applicable.<sup>8</sup> High Courts<sup>9</sup> and the Supreme Court allowed compromise in non-compoundable cases by using inherent powers. Sexual offences against women are not compoundable. Rape is the most heinous crime under the IPC. It destroys not only the body of the victim but also her soul.<sup>10</sup> The Courts allowed compromise in some cases of rape also based on facts and circumstances of the cases.

## (2) Non-compoundable offences and Sentence

Conviction and sentence are different to each other. The Division Bench of the Supreme Court held that where the offence is non-compoundable under section 320, the CrPC, the court based on compromise may reduce the amount of punishment.<sup>11</sup> The Supreme Court often used Article 142 of the Constitution of India to provide pragmatic solutions to litigants in unusual situations.<sup>12</sup>

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<sup>7</sup>*Id.*, section 320 (8).

<sup>8</sup>*Chhote Singh and others v. State of U.P.*, 1979 SCC OnLine All 341.

<sup>9</sup> Section 482 of the Code.

<sup>10</sup> *State of Punjab v. Gurmit Singh and Ors.* (1996) 2 SCC 384.

<sup>11</sup> *Unnikrishnan v. State of Kerala*, (2018) 15 SCC 343.

<sup>12</sup>*Ibid.*

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**(3) Relation between Section 320, the CrPC and Section 482, the CrPC**

Section 320 (9) says that only those offences can be compounded, which are provided under section 320. The starting words of section 482 are 'nothing in this Code...'. Section 482 gives very wide power to High Courts to secure ends of justice. Now a question arises whether an offence which is not mentioned under tables of section 320 can be allowed by High Courts to be compromised by using the power under section 482. Its answer is positive. High Courts can allow this. It will not amount to circumvention of section 320.<sup>13</sup>

There is certainty regarding the application of section 320. However, there is no certainty in the application of section 482. For example, offences of rape cannot be compromised in any circumstances under section 320. It is certain. But under section 482, High Courts allowed the compromise of rape cases in certain circumstances and denied them in certain circumstances. When the matter approached to the Supreme Court, the Court decided many cases against compromise in a rape case. But the Court allowed compromise in some rape cases by using power conferred under Article 142 of the Constitution of India.

Supreme Court, in many of its judgments, said that compromise of serious and heinous crimes should not be allowed to compromise. Such offences have a societal impact.

**(4) Section 406 & Section 498A, the IPC**

Section 498A and section 406 are commonly invoked by a woman in matrimonial disputes.<sup>14</sup> Section 406 was non-compoundable before the Criminal Procedure Code (Amendment) Act, 2008<sup>15</sup>. The Law Commission of India in its 154<sup>th</sup> & 177<sup>th</sup> Reports suggested making section 498A compoundable with permission court.

Many High Courts allowed compromise in such offences to establish peace in the family. Many High Courts did not allow compromise. They were in favour that they had no power to allow compromise in such cases. They adhered themselves to section 320(9) of the CrPC. Supreme Court settled this controversy in *B.S. Joshi v. State of Haryana*<sup>16</sup> and said that High Courts can allow compromise of offences. The Court further said that hypertechnical interpretation would frustrate the object of section 498A, the IPC.

<sup>13</sup> *Gopakumar B. Nair v. CBI*, (2014) 5 SCC 800.

<sup>14</sup> *Supra* n. 2, p. 441.

<sup>15</sup> Act No. 05 of 2009.

<sup>16</sup> 2003(4) SCC 675.

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Division Bench of the Supreme Court decided *B.S. Joshi v. State of Haryana*<sup>17</sup> on March 13, 2003. Hon'ble Justice Y. Sabharwal wrote the judgment. There was a matrimonial dispute. The wife lodged an FIR against her husband for committing offences under sections 498A and section 406 of the IPC. Offences under both sections were non-compoundable under section 320 of the CrPC. The matter was compromised. The Party approached the High Court to quash the FIR based on the compromise. The Court denied applying section 482 of the CrPC. The matter reached the Supreme Court. The Court held that the High Court could not in the exercise of its inherent power quash the criminal proceedings or the FIR or the complaint and section 320 of the Code did not limit or affect the powers under section 482 of the Code.

Supreme Court said that the purpose of introducing section 498A was to protect women from torture for dowry by their husband and their relatives. The hyper-technical view would be counterproductive and would act against the interests of women and against the object to which this provision was added. So, the High Court can use inherent power to quash an FIR for committing an offence under section 498A. Such interpretation will further provide protection and peace in the life of a wife. The Court must have due regard to the 'nature and gravity of the crime' and 'the societal impact.'"

Law Commission of India in its 237<sup>th</sup> Report recommended making 498A a compoundable offence. Law Commission of India in its 243<sup>rd</sup> Report<sup>18</sup> reiterated this.

#### **(5) Section 420 & Section 120B, the IPC**

*Gian Singh v. State of Punjab*<sup>19</sup> decided on September 24, 2012, is a leading case on this point. The magistrate convicted Gian Singh under section 420 (Compoundable with permission of Court) and section 120-B (Non-compoundable), the IPC. The matter was pending before the Session Judge. There was a settlement of parties. Gian Singh approached the High Court under section 482, the CrPC to quash the FIR. The Court dismissed the petition. He filed an appeal to the Supreme Court. When the special leave petition in *Gian Singh v. State of Punjab* came up for hearing, a two-judge Bench consisting of Hon'ble Justices Markandey Katju and Gyan Sudha Misra doubted the correctness of ratio *B.S. Joshi v. State of Haryana*,<sup>20</sup> *Nikhil Merchant v.*

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<sup>17</sup> *Ibid.*

<sup>18</sup> Law Commission of India, 243<sup>rd</sup> Report on section 498A, the IPC, August 2012.

<sup>19</sup> (2012) 10 SCC 303.

<sup>20</sup> 2003(4) SCC 675.

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*CBI*<sup>21</sup> and *Manoj Sharma v. State*<sup>22</sup> and referred the matter to a larger Bench. The main question was whether allowing compromise under section 482 in cases not covered under section 320 would amount to colourable legislation.

The full bench of the Supreme Court decided *Gian Singh v. State of Punjab* on September 24, 2012.<sup>23</sup> The full bench held that the ratios of *B.S. Joshi v. State of Haryana*,<sup>24</sup> *Nikhil Merchant v. CBI*<sup>25</sup> and *Manoj Sharma v. State*<sup>26</sup> are correct. Allowing settlement under section 482 is not colourable legislation. Sections 320 and 482 are different. Section 482 is more comprehensive. Inherent power under section 482 is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted under section 482 viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

Ratio of the Supreme Court can be divided into two parts –

**(1) Non-application of Section 482 (heinous and serious offences)**

High Court must consider the nature and gravity of the offence before using the power under Section 482 of the CrPC. High Court must not allow a compromise in serious and heinous cases like murder, rape, dacoity and offences committed by public servants etc. Compromise under special statutes like the Prevention of Corruption Act, 1988 etc., should not be allowed. These offences are not private. Such offences have a serious impact on society and the economic condition of the nation.

**(2) Application of Section 482 (Offences of Civil Character)**

There are two types of criminal cases, i.e., (1) purely criminal nature like murder, rape dacoity, and (2) criminal cases which have a predominately civil flavour like offences arising from a commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is private or personal and the parties have resolved their entire dispute. In the second category of offences, the High Court may quash the proceeding after observing the following factors -

**(1). Possibility of conviction is remote and bleak,**

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<sup>21</sup> (2008) 9 SCC 677.

<sup>22</sup> (2008) 16 SCC 1.

<sup>23</sup> (2012) 10 SCC 303.

<sup>24</sup> 2003(4) SCC 675.

<sup>25</sup> *Supra* n. 21.

<sup>26</sup> (2008) 16 SCC 1.

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- (2). Continuation of proceeding would cause injustice and great oppression,
- (3). There must be a complete settlement between parties.

#### **(6) Section 307, the IPC**

Section 307 deals with an attempt to murder. Section 320 of the CrPC does not cover it. It is a non-compoundable offence. Lower Courts cannot allow a compromise in non-compoundable cases. The reason for this is that Section 320 (9) prohibits it. However, Section 320 cannot control the inherent powers of the High Courts<sup>27</sup> and Supreme Court<sup>28</sup>.

#### **(6.1.) Mahesh Chand and Anr. v. State of Rajasthan (1988)**

*Mahesh Chand and Anr. v. State of Rajasthan*<sup>29</sup> is a leading case in which the Supreme Court allowed the compromise of the offence of attempt to murder. In this case, the lower court acquitted and the High Court convicted the accused. The accused went to the Supreme Court. Such judgment must be criticized. Allowing compromise after conviction by the High Court in serious and heinous offences will set a bad precedent.

Many High Courts delivered conflicting judgments after this judgment.<sup>30</sup> The Supreme Court overruled *Mahesh Chand and Anr. v. State of Rajasthan*<sup>31</sup> in *Ram Lal v. State of J & K*<sup>32</sup> on the ground of per incuriam.

#### **(6.2.) State of Rajasthan v. Shambhu Kewat (2013)**

Supreme Court in *State of Rajasthan v. Shambhu Kewat*<sup>33</sup> did not allow compromise for an offence under Section 307, the IPC.

#### **(6.3.) Narinder Singh & Ors. v. State of Punjab & Anr. (March 2014)**

Supreme Court decided *Narinder Singh & Ors. v. State of Punjab & Anr.*<sup>34</sup> on March 27, 2014. Ratios of *Gian Singh v. State of Punjab*<sup>35</sup> were followed. Compromise for attempt to murder under Section 307 of the IPC was involved. Supreme Court held that offences under Section 307,

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<sup>27</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), section 482

<sup>28</sup> The Constitution of India, 1949, Article 142.

<sup>29</sup> AIR 1988 SC 2111. Date of the judgment: March 14, 1988

<sup>30</sup> K. N. Chandrasekharan Pillai, "*RV Kelkar's Criminal Procedure*" 467, Eastern Book Company, India, Edn. 6<sup>th</sup> (2014).

<sup>31</sup> AIR 1988 SC 2111. Date of the judgment: March 14, 1988

<sup>32</sup> (1999) 2 SCC 213.

<sup>33</sup> (2014) 4 SCC 149. Date of the judgment: November 28, 2013.

<sup>34</sup> (2014) 6 SCC 466.

<sup>35</sup> (2012) 10 SCC 303.

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the IPC would fall in the category of heinous and serious offences and therefore be generally treated as crimes against the society and not against the individual alone.

Supreme Court further said that the High Court will not allow the compromise of an offence under section 307 where there is a strong possibility of conviction. The Court will allow compromise where chances of conviction are remote and bleak. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them, which may improve their future relationship.

From the above discussion, a compromise regarding section 307 can be divided into the following categories –

1. Compromise will not be allowed where there is a strong possibility of conviction, and
2. Compromise will be allowed where chances of conviction are remote and bleak.

Timings of settlement play a crucial role. If there is a settlement at any stage including after framing of charge but before evidence is to start or taking of evidence is at the infancy stage. The court will allow only after the nature of the crime and its societal impact must also be considered. Supreme Court said that High Courts should refrain from using inherent power in the following conditions –

1. Where prosecution evidence is complete, or
2. Matter is at the stage of argument after the conclusion of evidence, or
3. Trial court has convicted and appeal is pending.

In this case, the Supreme Court allowed compromise on the following grounds –

- (1). Compromise by respectable persons of society started very beginning,
- (2). They had started living peacefully in their village.
- (3). Evidence in court had not been started,
- (4). In case of compromise, no one will come as a witness. So there is no necessity to drag proceeding.

#### **(6.4.) State of M.P. v. Deepak & Ors (Sept. 2014)**

Supreme Court decided *State of M.P. v. Deepak & Ors*<sup>36</sup> on September 10, 2014. In this case, a compromise of an offence relating attempt to murder (Section 307) was involved. Both parties compromised and filed a petition in the High Court under 482. High Court became ready to

<sup>36</sup>Available at: <https://main.sci.gov.in/judgment/judis/41903.pdf> (Visited on July 25, 2022).

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quash criminal proceedings. High Court observed “The fact that the complainant had also submitted that he did not wish to prosecute the accused persons as he had settled all the disputes amicably with them. For quashing the proceedings, the High Court referred to the judgment of the Supreme Court in *Shijiv. Radhika* (2011). Against the Judgment of the High Court, the State of Madhya Pradesh filed an SLP in the Supreme Court.

The Supreme Court accepted the ratio of *Narinder Singh & Ors. v. State of Punjab & Anr.*<sup>37</sup> to decide this case. Supreme Court observed, “After examining the facts of this case and the medical record, we think that it was not a case where the High Court should have quashed the proceedings in exercise of its discretion under Section 482 of the Code.” The decision of the High Court was quashed. The Supreme Court directed the Magistrate concerned to proceed with the trial of the case.

Supreme Court observed, “The offence under Section 307 is not treated as a private dispute between the parties inter se but is held to be a crime against the society. When we apply the ratio/principle laid down in the *Narinder Singh case*(2014) to the facts of the present case, we find that the injuries inflicted on the complainant were very serious. The accused was armed with a sword and inflicted blows on the forehead, ear, and back side of the head as well as on the left arm of the complainant. The complainant was attacked five times with the sword by the accused person, out of which two blows were struck on his head. But for the timely arrival of the brother of the complainant and another lady named Preeti, who rescued the complainant, the attacks could have continued. In a case like this, the High Court should not have accepted the petition of the accused under Section 482 of the Code.”

#### **(6.5.) State of M.P. v. Laxmi Narayan &Ors (2019)**

This case is related to section 307 read with section 34 of the IPC. A two-judge bench of this Court vide its order dated 08.09.2017, given the apparent conflict between the two decisions of this Court in *State of Rajasthan v. Shambhu Kewat*<sup>38</sup> and *Narinder Singh v. State of Punjab*<sup>39</sup> referred the matter to the full bench, and that is how the matter is placed before a Bench of three Judges.

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<sup>37</sup> (2014) 6 SCC 466.

<sup>38</sup> (2014) 4 SCC 149.

<sup>39</sup> *Supra* n. 37.

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In *State of M.P. v. Laxmi Narayan & Ors.*<sup>40</sup>, the full bench of the Supreme Court has observed as para 13 as under:

1. Non-compoundable offences having overwhelmingly and predominately civil character can be allowed for compromise.
2. Compromise of non-compoundable serious and heinous offences should not be allowed.

### **(7.) Section 306, the IPC**

Daxaben is the wife of the late Shailesh Kumar Chimanbhai Patel, who is stated to have committed suicide on March 01, 2020, by consuming poison in his office. The case against the accused was that they had cheated the deceased of Rs.2,35,73,2.00/- and thus the deceased, who was in an acute financial crunch, was constrained to take his own life. An FIR was registered against the accused for committing an offence under Section 306, i.e. abetment of suicide. The complainant was a cousin of the accused. A compromise was concluded between the accused and the cousin of the deceased. The High Court allowed compromise by using powers under Section 482 of the CrPC and quashed the FIR. The wife of the deceased opposed compromise. She approached the Supreme Court.

Division Bench of the Supreme Court decided *Daxaben v. The State of Gujarat & Ors*<sup>41</sup> on July 29, 2022. Supreme Court framed the issue at para 25 of the judgment as follows –The only question in this appeal is whether the Criminal Miscellaneous Applications filed by the accused under Section 482 of the Cr.P.C. could have been allowed and an FIR under Section 306 of the IPC for abetment to commit suicide, entailing punishment of imprisonment of ten years, could have been quashed based on a settlement between the complainant and the accused named in the FIR. Supreme Court answered in negative.

Ratios of *Gian Singh v. State of Punjab*,<sup>42</sup> *Narinder Singh v. State of Punjab*,<sup>43</sup> *Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujrat and Another*<sup>44</sup> and *State of Madhya Pradesh v. Laxmi Narayan & Ors.*<sup>45</sup> were followed.

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<sup>40</sup> (2019) 5 SCC 688.

<sup>41</sup> 2022 SCC OnLine SC 936. Available at:

[https://main.sci.gov.in/supremecourt/2021/32529/32529\\_2021\\_6\\_1503\\_36813\\_Judgement\\_29-Jul-2022.pdf](https://main.sci.gov.in/supremecourt/2021/32529/32529_2021_6_1503_36813_Judgement_29-Jul-2022.pdf) (Visited on July 29, 2022).

<sup>42</sup> (2012) 10 SCC 303.

<sup>43</sup> (2014) 9 SCC 466

<sup>44</sup> (2017) 9 SCC 641.

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Supreme Court said that serious and heinous offences like murder, abetment to commit suicide, rape, dacoity, burglary etc. offences are neither civil nor private. Such crimes are against the society.

Allowing compromise in such cases will have the following effects –

- (1). It will set a dangerous precedent,
- (2). FIR or complaint will be lodged for remote purposes like extracting money from the accused i.e. malicious prosecution,
- (3). The rich will misuse Section 482. They will purchase informant/ complaint/ victim. They will make compromises in serious cases also like murder, bride burning, rape etc. They will also frustrate the purpose of Sections 304-B, 306, and 498-A etc.

The impugned orders of the High Court were set aside by the Supreme Court. Judgment was passed in favour of the appellant i.e. in favour of the wife of deceased.

### **(8) Section 376, the IPC**

Rape is more heinous than murder.<sup>46</sup> Section 376 deals with punishment for rape. At the time of allowing the compromise in a rape case, the following story must also be considered. A shocking incident had come to light where a woman had accused a man who raped her and later married her, selling her baby to a childless couple after she delivered the baby. She alleged that the man raped her in 2014 and under pressure from the elders, she compromised and married the accused.<sup>47</sup>

#### **(8.1) Gian Singh v. State of Punjab (2012)**

The full bench of the Supreme Court decided *Gian Singh v. State of Punjab*<sup>48</sup> on September 24, 2012. This case was not related to rape. But something was said in para 61 of the judgment. The Court said that heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc., cannot be fittingly quashed even though the victim or victim's family and the

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<sup>45</sup> (2019) 5 SCC 688

<sup>46</sup> *State of Punjab v. Gurmit Singh & Ors*, (1996) 2 SCC 384

<sup>47</sup> Available at: <https://thelogicalindian.com/news/youth-married-girl-he-raped-sold-newborn-baby/> (Visited on July 26, 2022.)

<sup>48</sup> (2012) 10 SCC 303.

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offender have settled the dispute. Such offences are not private and have a serious impact on society.

### **(8.2.) Shimbhu & Anr v. State of Haryana (2013)**

The full Bench of the Supreme Court decided *Shimbhu & Anr v. State of Haryana* on August 27, 2013. Hon'ble Justice P. Sathasivam wrote the judgment. She was gang raped for two days. An FIR was registered on December 30, 1995. The accused had to get married in 1999. During marriage, four children were born. The matter was pending before the Supreme Court. An affidavit regarding the settlement between the accused and the victim was submitted to the Supreme Court on December 24, 2011. The victim said that she got married and had four children born from this wedlock. She is living happily for the last 12 years. She doesn't want her husband to be punished or serve severe punishment. She has no objection if the sentence of the appellants is reduced to the period already undergone.

Supreme Court did not reduce the punishment. The appeal was dismissed. The Supreme Court has observed the following points –

- (1). Compromise cannot be the leading factor for reducing the punishment.
- (2). Rape is an offence against society. So, its trial, conviction and punishment should not be left at the discretion of the victim.
- (3). There is no proof method to decide that the consent of the victim was voluntary and genuine. It may be that victims have been pressurized and the trauma undergone by her all the years might have compelled her to opt for a compromise.
- (4). Allowing compromise will put an additional burden on the victim. The accused will compel the victim by hook or crook for compromise.
- (5). So, in the interest of justice and avoiding unnecessary harassment of victims, compromise should not be allowed.

### **(8.3.) Saju PR v State of Kerala and others (2019)**

The Supreme Court through the Division Bench of Justices A.M. Khanwilkar and Dinesh Maheshwari in *Saju PR v. State of Kerala and others*<sup>49</sup> dated November 22, 2019, had also

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<sup>49</sup>Available at: [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-367315.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-367315.pdf) (Visited on July 29, 2022).

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quashed the FIR on the ground of settlement between the accused and the victim for doing complete justice to the parties concerned.

**(8.4.) Khajan Singh and Another v. State of U.P. and Another(2020)**

The victim of rape and the accused got marriage. The accused applied Section 482 of the CrPC to quash the FIR. The accused and victim appeared before the Court. Hon'ble Justice Mrs Manju Rani Chauhan, Allahabad High, passed an order in *Khajan Singh and Another v. State of U.P. and Another*<sup>50</sup> on October 08, 2020, and quashed the proceeding of rape based on compromise. Hon'ble Justice Mrs Manju Rani Chauhan applied the ratio of *Gian Singh v. State of Punjab*<sup>51</sup> and *Shaifullah and Others v. State of U.P. & Another*.<sup>52</sup>

**(8.5.) Vimlesh Agnihotri & Ors. v. State &Anr. (August 16, 2021)**

Delhi High Court decided *Vimlesh Agnihotri & Ors. v. State & Anr.*<sup>53</sup> on August 16, 2021. Delhi High Court referred the ratios of *Shimbhu v. State of Haryana*,<sup>54</sup> and *State of M.P. v. Laxmi Narayan & Ors.* and concluded that given the mandate of the Supreme Court that High Courts must not exercise its powers under Section 482 Cr.P.C. for quashing an offence of rape only on the ground that the parties have entered into a compromise, this Court is not inclined to entertain this petition. With these observations, the petition was dismissed.

**(8.6.) Rahul P.R. and Anr. v. State of Kerala &Anr. (August 26, 2021)**

Kerala High Court decided *Rahul P.R. and Anr.v. State of Kerala & Anr.*<sup>55</sup> on August 26, 2021. The Hon'ble Mrs Justice Shircy V. wrote this judgment.

Petitioners were charged for committing an offence under Sections 366A, 376 and 34 of the Indian Penal Code and under the POCSO Act, 2012. Accused had committed gang rape with the victim. An affidavit of the victim was produced. She alleged that the accused had married her under the Special Marriage Act, of 1954. Both are living happily. She wanted to quash the FIR

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<sup>50</sup> Date of the Order: October 08, 2020. Available at: [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-383096.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-383096.pdf) (Visited on January 23, 2023).

<sup>51</sup> *Supra* n. 48.

<sup>52</sup> 2013(83) ACC 278.

<sup>53</sup> 2021 SCC OnLine Del 4024.

<sup>54</sup> *Supra* n. 49.

<sup>55</sup> 2021 SCC OnLine Ker 3348. Available at: [https://www.livelaw.in/pdf\\_upload/rahul-pr-anr-v-state-of-kerala-401235.pdf](https://www.livelaw.in/pdf_upload/rahul-pr-anr-v-state-of-kerala-401235.pdf) (Visited on July 26, 2022).

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and end all proceedings against the accused turn husband. The petitioners have filed this application under Section 482 of the CrPC for quashing an FIR.

In this case, many previous judgments of the Supreme Court were discussed. Hon'ble Mrs Justice observed, "Rape is a very serious offence and it is doubtless that it is not an offence of private but is also an offence towards society. It is worse than murder as humiliating and horrifying experiences are caused to the victim, and so it is considered the most heinous, brutal and cruel crime against a woman. When it is towards a child the gravity is all the more severe and excruciating as it may even lower the self-esteem, self-confidence and dignity of the child and the psychic effect and impact would cause a devastating effect on the minor and result in far-reaching consequences. The Special Act (POCSO Act) itself was enacted to protect children from sexual assault and harassment.

The Court added: "...the provisions of the special Act enacted to protect and save minor children from sexual offences and harassment are also involved, the argument that now the victim has attained the age of majority and is living happily with 1st petitioner are not valid grounds or justifiable reasons or decisive factors for consideration to quash the criminal proceedings as sought for".

The petition was dismissed and compromise was not allowed.

### **(9) Sections 467, 468, and 471 (Forgery)**

Full Bench of the Supreme Court decided *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Ors v. State of Gujarat and Anr.*<sup>56</sup> on October 04, 2017. This case was mainly related to the forgery of a document. An FIR was registered for committing offences under Sections 384, 467, 468, 471, 120-B and 506(2) of the Penal Code. Hon'ble Dr Justice D Y Chandrachud wrote the judgment. He concluded the ratio of the judgment at para 15 of the original judgment in ten points. Some of them are -

- (1). The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction to compound an offence. While compounding an offence, the power of the court is governed by the

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<sup>56</sup> (2017) 9 SCC 641. Available at: [https://main.sci.gov.in/supremecourt/2016/40266/40266\\_2016\\_Judgement\\_04-Oct-2017.pdf](https://main.sci.gov.in/supremecourt/2016/40266/40266_2016_Judgement_04-Oct-2017.pdf) (Visited on July 26, 2022).

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provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attractive even if the offence is non-compoundable.

- (2). The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute revolves ultimately around the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;
- (3). The ratio of *Gian Singh v. State of Punjab*<sup>57</sup> was followed and said that heinous and serious cases of compromise would not be allowed.
- (4). As distinguished from serious offences, there may be criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour. In such cases, High Courts may allow compromise.
- (5). Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in rejecting the compromise.

#### (10.) Conclusion

Compromise of offences brings peace among parties, reduces the burden of court and saves the budget of the government. But at the same time, the interest of society, pressure for compromise, the impact of compromise on the economic condition of the country and the timing of compromise cannot be ignored. So, compromise in serious cases is not allowed as per section 320 of the CrPC. Uncertainty regarding the application of Section 482 of the CrPC is going on. For example, Supreme Court denied reducing punishment in a rape case in *Shimbhu & Anr v. State of Haryana* (2013); even four children were born from valid wedlock. Kerala High Court in *Rahul P.R. and Anr.v. State of Kerala & Anr.* (2021) rejected the application of Section 482 and did not allow a compromise in a rape case, even if the accused had got marriage. But, the Supreme Court in *Saju PR v. State of Kerala and others* and Allahabad High Court in *Khajan Singh and Another v. State of U.P. and Another* (2019) allowed compromise after marriage in rape cases. Parliament must amend the CrPC and end this uncertainty.

Parliament should insert Section 498A in the table of Section 320 (2) to make as a compoundable offence with permission of the Court.<sup>58</sup> Parliament must also amend section 320(1). The table of

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<sup>57</sup> (2012) 10 SCC 303.

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this provision says that the compromise of theft offence can be done by the owner. The offence of theft can also be done by the owner. So the 'owner' word must be substituted by the possessor.

A rapist may get compromised only to avoid punishment. The question is if a rapist gets marriage to the victim and is acquitted based on compromise. But after a few days, he divorced her. Can he be prosecuted again? The answer is no. So before allowing compromise, post-consequences factors should not be ignored.

Awareness among the public should be created regarding the process and consequences of compromise.



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<sup>58</sup>*Ramgopal v. State of M.P.* (2010) 13 SCC 540 : (2011) 2 SCC (Cri) 145. Law Commission of India in its 154<sup>th</sup> (1996), 177<sup>th</sup> (2001), 237<sup>th</sup> and 243<sup>rd</sup> (2012) Reports, recommended making 498A a compoundable offence. In *B.S. Joshi v. State of Haryana* [2003(4) SCC 675] Supreme Court allowed the compromise of offence mentioned under section 498A, the IPC. State Legislature of Andhra Pradesh amended section 320 (2) and made section 498A a compoundable offence.

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