IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 373 OF 2016

M/s. AFX+Q Engineers and Anr. .. Applicants
Versus
M/s. Nikita Udyog and Anr. .. Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 374 OF 2016
WITH
CRIMINAL REVISION APPLICATION NO. 375 OF 2016
WITH
CRIMINAL REVISION APPLICATION NO. 376 OF 2016
WITH
CIVIL CONTEMPT PETITION NO. 510 OF 2017
IN
CRIMINAL REVISION APPLICATION NO. 373 OF 2016

Nikita Udyog .. Petitioner
Versus
Dilip Hanumant Keshkamant and Anr. .. Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 369 OF 2023

Dhananjay Digambar Bhagwat .. Applicant
Versus
Shree Santsena Maharaj Nagari Sahakari Pathasantha Maryadit Sinnar .. Respondent

WITH
CRIMINAL REVISION APPLICATION NO. 625 OF 2015

Rajaram Ganpat Narvekar .. Applicant
Versus
Sudhir Dewon Sakpal (since deceased through legal heirs) Suhasini Sudhir Sakpal and Anr. .. Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 152 OF 2007
WITH
INTERIM APPLICATION NO. 3830 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 152 OF 2007

Kailas Bapurao Gadge .. Applicant

Versus

State of Maharashtra and Anr. .. Respondents

WITH

CRIMINAL APPEAL NO. 1543 OF 2003

WITH

CRIMINAL APPLICATION NO. 1344 OF 2015

IN

CRIMINAL APPEAL NO. 1543 OF 2003

Sheela Jagdish Katira .. Applicant

Versus

Ramesh Obhan and Anr. .. Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 38 OF 2007

Ramesh Jagdishchandra Obhan .. Applicant

Versus

The State of Maharashtra .. Respondents

WITH

CRIMINAL APPLICATION NO. 413 OF 2016

WITH

CRIMINAL APPLICATION NO. 565 OF 2016

IN

CRIMINAL REVISION APPLICATION NO. 38 OF 2007

Sheela Jagdish Katira .. Applicant

Versus

The State of Maharashtra .. Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 474 OF 2007

Kashinath Pandurang Laykar and Anr. Applicants .. (Original Accused)

Versus

The State of Maharashtra and Anr. .. Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 475 OF 2007

Manik Krushna Jadhav and Anr. .. Applicants (Original Accused)

Versus

The State of Maharashtra and Anr. .. Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 156 OF 2015

Vinayak Achut Ghaisas .. Applicant (Orig. Accused)

Versus

State of Maharashtra and Anr. .. Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 158 OF 2015

Vinayak Achut Ghaisas .. Applicant (Orig. Accused)

Versus

Ashok Tukaram Patil and Anr. .. Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 380 OF 2002

Sushila Ramji Singh and Anr. .. Applicants

Versus

Vinodkumar D. Palrecha and Anr. .. Respondents

WITH

CRIMINAL REVISION APPLICATION NO. 585 OF 2002

M/s. Shetkari Solvant (India) Ltd. .. Applicant

Versus

Maharashtra State Financial Corporation and Anr. .. Respondents

.....

- Ms. Archana P. Gaikwad a/w. Rutuja S. Gholap for Applicant; Mr. Gandhar Raikar a/w. Ms. Iyanaha Parbhoo, Ms. Anaaya Dalvie, Advocate for Respondent No.1 in Revn. No.373 of 2016, Revn. No.374 of 2016, Revn. No.375 of 2016 and Revn. No.376 of 2016 and CP No.510 of 2017.

- Mr. Akshay Bankapur, Advocate for Applicant; Mr. Saurabh K. Raut, Advocate for Respondent No.1 in Revn. No.369 of 2023.
- Mr. Mukesh Pabari a/w. Ms. Sushila Gupta, Advocates for Applicant; Mr. Kishor K. Malpathak, Advocate for Respondent No.1 in Revn. No.625 of 2015.
- Ms. Namrata Waghole, Advocate for Applicant; Ms. Shraddha Pawar, Advocate i/by Mr. Dilip Bodake for Respondent No.2 in Revn. No.152 of 2007.
- Ms. Hutoxi Tavadia a/w. Mr. Himanshu Kode, Advocates for Applicant in Revn. No. 38 of 2007; Mr. Nusrat Shah a/w. Ms. Ema Almeida, Mr. Kevin Gala, Ms. Archana Jha and Ms. Sayali Ramugade, Advocates i/by Naazish Shah for Appellant in Appeal No.1543 of 2003 and Respondent No.2 in Revn. No.38 of 2007.
- Mr. Shekhar A. Ingawale, Advocate for Applicants in Revn.No.474 of 2007 and 475 of 2007.
- Mr. V.S. Tadake a/w. Mr. Vinay D. Borwankar, Advocates for Applicant; Mr. Shantanu Kadam, Advocate for Respondent No.2 in Revn. Nos.156 of 2015 and 158 of 2015.
- Mr. S.R. More, Advocate for Applicant in Revn. No.380 of 2002.
- Ms. Maitryee Garade a/w. Mr. Vinayak Pandit, Advocates i/by Mr. Ajinkya Udane for Applicant and Mr. Saurabh C. Nagarsheh, Advocate for Respondent in Revn. No.585 of 2002.
- Dr. Dhanalakshmi Krishnaiyer, APP for the State in all matters.
- Mr. Faiz Merchant, *Amicus Curiae* a/w. Mr. Faizal F. Shaikh, Advocate appointed by the Court.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 20, 2024.

JUDGEMENT:

1. After hearing Mr. Raikar, learned Advocate for Respondent - Complainant in Criminal Revision Application (for short "CRA") Nos.373 of 2016, 374 of 2016, 375 of 2016 and 376 of 2016 and Dr. Krishnaiyer, learned APP for the State on 19.11.2024, the following order was passed:-

"*1.* *Heard learned Advocates and learned APPs appearing for the respective parties in all Revision Applications.*

2. *The submissions advanced by learned Advocates in serial Nos.15, 16, 17, 18, 21, 35, 47 and 49 have been heard by me. The learned Advocates have relied upon several decisions of the Supreme Court, as also this Court. The aforesaid matters pertain to the parties proposing to file Consent Terms in matters under Section 138 of Negotiable Instruments Act, 1881 (for short '**the said Act**') which have travelled to this Court in Revision proceedings. Since all these matters pertain to deciding a common question of law as to whether this Court would be empowered under Section 397 of Code of Criminal Procedure to accept Consent Terms as a sequitur of which it would lead to compounding of the offence is required to be decided by this Court.*

3. *In the present cases at serial Nos.15, 16, 17, 18, 21, 35, 47 and 49 it is seen that parties have referred to the decision in case of **M/s Meters and Instruments Private Limited V/s. Kanchan Mehta**[1] to contend that even in the absence of original Complainant before this Court, the Court would have power to close the proceeding and discharge the Accused in the absence of consent of Complainant in the interest of justice. Equally in the same breath, parties have also approached the Court by stating both the Accused and Complainant have after the entire trial is over and Appeal proceedings are over have now desired to compromise and file Consent Terms and they have urged the Court to take on record Consent Terms in the interest of justice and put a quietus to the matter by foregoing the conviction and the fine due to the compromise.*

4. *However, in the case of **In Re Expeditious Trial of Cases under Section 138 of Negotiable Instruments Act, 1881**[2] in paragraph No.20, it has been held by the Supreme Court that the decision in the case of M/s. Meters and Instruments Private Limited (1st supra) is not a good law in so as far it confers power on Trial Court to discharge the Accused.*

5. *Further in the case of **Raj Reddy Kallem V/s. State of Haryana and Anr.**[3] the Division Bench judgment dated 08.04.2024 in Criminal Appeal No.2210 of 2024, the Supreme Court has held that if the Complainant is adequately compensated then the Appeal cannot be kept pending with reference to proceedings under Section 138 of the said Act. Whether this observation and finding of Supreme Court would hold good even if Complainant is unwilling to compound the case, or if Complainant and Accused both approach the Court and file Consent Terms in Revision proceedings is required to be considered in the above case. Today, in the course of submission Mr. Raikar, learned Advocate has placed on record*

1 2018 (1) SCC 560.
2 2023 SCC OnLine SC 1197
3 (2024) 8 SCC 588

the following decisions for consideration:-

(i) ***P. Mohanraj and Others Vs. Shah Brothers Ispat Private Limited.***[4]

(ii) ***Vijay Kumar Vs. Anil Kumar Gupta & Anr.***[5]***;***

(iii) ***JIK Industries Limited and Others Vs Amarlal V. Jumani and Anr.***[6]

(iv) ***Damodar S. Prabhu Vs. Sayed Babalal H.***[7]***;***

(v) ***K. M. Ibrahim Vs. K. P. Mohammed & Anr.***[8]

6. *To assist the Court on the above issue and while referring to the aforesaid decisions he has made following submissions:-*

6.1. *He would submit that the scope of Revisional jurisdiction of High Court under Section 401 of Cr.P.C. is limited and the Courts have held that invoking this Section to re-appreciate the evidence and come to its own conclusion, in particular when the evidence has already been appreciated by the Magistrate as also Sessions Court in Appeal is not permissible. He would submit that for the High Court to interfere in two concurrent findings of conviction there must be either a gross miscarriage of injustice or total non-consideration of facts as held by the Supreme Court in the case of* ***State of Kerela Vs. PIJ Namboodiri***[9]*. He would submit that similarly it is held by the Supreme Court in the case of* ***T.P.Murugan Vs. Bojan***[10] *that mere doubt in the admitted evidence cannot be interfered with, in Revisional jurisdiction in the event of concurrent findings.*

6.2. *He would submit that the Courts have also held that the Revisional Court also enjoy power conferred upon the Appellate Court by virtue of powers contained in Section 401 of Cr.P.C. He would submit that Section 401 Cr.P.C. is a provision enabling the High Court to exercise all powers of Appellate Court. He would submit that the provision contained in Sections 395 to 401 of Cr.P.C. read together do not indicate that revisional powers can be exercised as second Appellate power. He would however submit that for limited purpose, the Revisional Court can be conferred with powers of the Appellate Court for the purpose of satisfying itself for the purpose of ascertaining the legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior Court as held by the Supreme Court in the case of* ***State of Maharashtra Vs. Jagmohan Singh and***

4 (2021) 6 Supreme Court Caes 258.
5 2018 SCC OnLine Del 12746.
6 (2012) 3 Supreme Court Cases 255.
7 (2010) 5 Supreme Court Cases 663.
8 Criminal Appeal No.2281 of 2009.
9 1992 2 SCC 452.
10 2008 8 SCC 469.

Ors.[11].

6.3. *He would submit that in view of the above judgements, the power to record a compromise in view of the settlement arrived at between the parties, and to take consent terms on record in its Revisional jurisdiction, in particular when there is concurrent finding of conviction by the Magistrate and Sessions judge becomes an impediment for the High Court.*

6.4. *He would submit that in this regard, when the Revision Application is pending, one of the following approaches are open to the Accused to be adopted: -*

(i) *To challenge the impugned order under Section 482 of Cr.P.C. or file a Writ Petition for Quashing of the impugned Order. However, this involves re-filing of the Revisions as Quashing Petitions since the Revision Petition cannot be converted as a Writ Petition in ordinary course. The compromise can only be recorded by the Hon'ble High Court in its extraordinary jurisdiction.*

(ii) *To file a Criminal Application in the existing proceedings for compounding of offence under Section 147 of the Negotiable Instruments Act, 1881. This is permissible as laid down by the Supreme Court which has observed that the non-obstante clause under Section 147 of the said Act will have an overriding effect under the provisions of Cr.P.C. Section 147 and it also does not bar parties from compounding the offence under Section 138 of the said Act even at the Appellate stage as held in K.M. Ibrahim (8th supra). For following the compounding procedure the accused will be required to file an application and the same will be dealt with as per the guidelines laid down for compounding which includes a payment of 15% cost if the application for compounding is made before the High Court or the Sessions Court as held in Damodar S. Prabhu (7th supra). The compounding provision has also been discussed in the subsequent judgements of the Supreme Court with respect to the mode and manner of compounding and it explains the difference between quashing of a case and compounding. The distinction between Quashing and compounding is also well explained and it is held that in Quashing, the Court applies it in order to quash the impugned order however, in compounding the consent of the injured party is required to compound the offence. Further, it was also held that there is no reason to refuse a compromise between the parties, however the procedure relating to compounding under Section 320 Cr.P.C. cannot be given a go-by as held by the Supreme Court in the cases of* ***Vinay Nayak Vs. Ryot Seva Saharkari Bank Ltd.***[12] *and* ***JIK Industries*** *(6th supra).*

11 2004 7 SCC 659.

12 2008 2 SCC 305.

(iii) *The third option available to the Accused may not be applicable in all Criminal Revisions but for those cases where during the pendency of Appeals and Revisions, some sentence was served by the Accused and in view of the compromise it is possible for the Court of Revisional jurisdiction to modify the sentence without interfering with the impugned orders of conviction and modify the conviction orders by reducing the sentence to the period already undergone and record that this is in view of the settlement arrived at between the parties. This is also permissible since under Revisional jurisdiction the High Court is permitted to bring in the ends of justice as held by the Delhi High Court in the case of* ***Vijay Kumar Vs. Anil Kumar Gupta***[13].

7. *In the above context, the provisions of Sections 397 and 401 of the Cr.P.C. and the power of revision of this Court will have to be seen and considered qua the provisions of saving of inherent power of High Court under Section 482 alongwith Section 401 (5) of the Cr.P.C.*

8. *Ms. Krishnaiyer has referred to and relied upon following three decisions in order to contend that in any Application filed under Section 397 of the Cr.P.C. inherently, the Court would have power under Section 482 being the High Court to determine the same:-*

(i) ***Harshendra Kumar D Vs. Rebatilata Koley Etc.***[14]***;***

(ii) ***B. V. Seshaiah Vs. The State of Telangana***[15]***;***

(iii) ***Din Nath Vs. Shankar Dass and Anr.***[16]

9. *Attention of the learned Advocates and parties is drawn to the following judgments which refer to powers of the revisional Court under Section 397 read with Section 401 Cr.P.C. in view of the findings and observation made therein :-*

(i) In the Full Bench judgment of this Court in the case of ***Abasaheb Yadav Honmane Vs. State of Maharashtra***[17] *paragraph Nos. 6.13, 7.3 and 7.6 are relevant and read thus:-*

> *"****6.13.*** *The power of compounding is strictly regulated by statutory powers while the inherent powers of the Court are guided by judicial pronouncements within the scope of section 482 of the Code. Another very important facet of criminal jurisprudence which has developed in the present time is with regard to the impact of compounding and/or quashing criminal proceedings in relation to*

13 2018 SCC Online Del 12746.

14 AIR 2011 SC 1090.

15 Criminal Appeal arising out of Special Leave (Crl) No.7099 of 2018.

16 Cr. MMO No.158 of 2024 dated 20.03.2024.

17 2008 (2) Mh.L.J.

an offence, its impact on the victim, witnesses and the society at large. This must be treated as a relevant consideration. The Penal Code, 1860 has been subjected to various amendments in order to ensure that society becomes a much safer place for human existence and various offences which affect large sections of society have been incorporated as penal offences. For example, the object of section 498-A was to strike at the root of menace of dowry and to prevent crimes against women. There are various examples of a similar kind where penal provisions have been introduced to sub-serve the purpose of proper administration of justice and protection to individuals. Every crime committed has dual consequences. Firstly it affects the victim adversely. Secondly it disturbs the fabric of the society. It may even introduce an element of fear psychosis in human relationships and thus prejudice harmony in humanity. In the case of Vinay Devanna Nayakv. Ryot Seva Sahakari Bank Ltd., 2008 (1) Bom. C.R. 523, the Supreme Court while dealing with an offence under section 138 of the Negotiable Instruments Act observed as under:

"11. It is no doubt true that every crime is considered to be an offence against the society as a whole and not only against an individual even though an individual might have suffered thereby. It is, therefore, the duty of the State to take appropriate action against the offender. It is equally the duty of a Court of law administering criminal justice to punish a criminal. But there are offences and offences. Certain offences are very serious in which compromise or settlement is not permissible. Some other offences, on the other hand, are not too serious and the law may allow the parties to settle them by entering into a compromise. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for his abstaining from proceeding further with the case."

Earlier, an offence punishable under section 138 of the Negotiable Instruments Act was not compoundable and it was so held by the Courts. Parliament felt the necessity to make the offence compoundable and thus inserted section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002). This clearly indicates that the power of compounding has to be exercised within its

restricted scope. A crime being a public wrong in breach and violation of public rights and duties, it affects the whole community and is harmful to society in general. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice, often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to the determination of the particular case, protecting its ability to function as a Court of law in the future."

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"7.3. The Court has to keep in mind the principle that penal provisions are to be construed strictly. The mandatory provisions of the Code would also have to be interpreted strictly unless the provisions have been worded with liberal language having wide ramifications by the Legislature itself. Rule of liberal construction can safely be applied to these provisions with an intent to achieve public interest and larger interest of justice....."

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"7.6. The exercise of inherent powers under section 482 of the Code cannot be circumvented or effaced either by judicial dictum or with reference to other provisions of the Code....."

(ii) In the Full Bench judgment of this Court in the case of ***Maya Sanjay Khandare and Another Vs. State of Maharashtra***[18]*, paragraph Nos.18 and 19 read thus:-*

*"**18.** ".....There is no power conferred by the Code either on the appellate Court/revisional Court to acquit an accused convicted for a commission of a non-compoundable offence only on the ground that compromise has been entered into between the convict and the informant/complainant."*

***19.** .....The order of conviction would have to be tested by the appellate Court/revisional Court on merits and if the Court finds it necessary to maintain the conviction, the compromise entered into would be only a factor to be considered while imposing appropriate sentence. In other words while maintaining the conviction for a non-compoundable offence the fact that after such conviction the parties have entered into a compromise would be a*

18 2021 SCC OnLine Bom 3

mitigating factor to be taken into consideration while awarding appropriate sentence."

(iii) In the judgment of the Supreme Court in the case of ***Yogendra Yadav and Ors. Vs. State of Jharkhand & Anr.***[19] *paragraph No. 4, reads thus :-*

> *" **4.** Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988]). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace."*

(iv) In the judgment of the Single Judge of the Gauhati High Court in the case of ***Otin Panging and Ors. Vs. Nambor Kaman and Ors.***[20] *, paragraph Nos.3 and 4 reads thus :-*

> *"**3.** I have considered the rival submissions. I have also perused the provisions of sections 397 and 482 of the Cr. P.C. and Article 227 of the Constitution.*

19 2014 AIR (SC) 3055
20 1991 (1) Crimes 509 (Gau.)

Under section 397 of the Cr. P.C. revisional jurisdiction has been vested both in the High Court and the Sessions Judge to call for and examine the records of any proceedings before any inferior criminal Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and, as to the; regularity of any proceedings of such inferior Court, and then to pass necessary order in accordance with the provisions of section 398 to 401 of the Cr. P.C. The jurisdiction of both the Court is concurrent. However, once an-application is made under this section either to the High Court or to the Sessions Judge no further application can be made by such person to the other in view of the specific bar contained in sub-section (3) of section 397 which reads:

"(3) If an application under this section has been made by any person either to the High Court or to the Sessions judge no further application by the same person shall be entertained by the other of them".

Section 482 of the Cr. P.C. deals with the inherent powers of High Court. It provides:

"482. 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."

The principles in relation to the exercise of inherent powers of the High Court, which have been followed ordinarily and generally, almost invariably, barring a few exceptions, were set out by the Supreme Court in Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : AIR 1978 SC 47, 50 in the following terms:

"(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the

express bar of law engrafted in any other provision of the Code."

The question as to whether the bar contained in sub-section (3) of section 397 of the Cr. P.C. will in any way limit or affect the inherent powers of the High Court under section 482 is also no more res integra. This aspect of the matter was considered by the Supreme Court in Madhu Limaye, Supra. It was observed that the bar operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision under sub-section (1) of section 397. The bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by the aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent power. This legal position was reiterated by Krishna Iyer. J. In Raj Kapoor v. State(Delhi Administration), (1980) 1 SCC 43 : AIR 1980 SC 258 in the following words:

"In short, there is no total ban on the exercise of inherent power where abuse of the process of the Court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more….".

In a case where glaring injustice stares the Court in the face, the power under section 482 should be exercised. The matter was also discussed by the Surpreme Court in Municipal Corporation of Delhi v. Ram Kishan Rohtagi, (1983) 1 SCC 1 : AIR 1983 SC 67 wherein it was observed:

"This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in eases where grave and substantial injustice has been done or where the process of the Court has been seriously abused. It is not merely a revisional power meant to be exercised against the order passed by subordinate Courts".

It was further made clear;

"the power being an extraordinary one, it has to be exercised sparingly."

4. *From the aforesaid discussion, it is clear that sections 397 and 482 of the Cr. P.C. operate in two different fields. Sections 482 confers a separate and*

independent power on the High Court to pass orders ex debito justitiae to prevent abuse of the process of the Court or to secure the ends of justice. This inherent power of the High Court, as observed by the Supreme Court in Raj Kapoor, Supra, does not stand repelled when the revisional power under section 397 overlaps. In a given case, the High Court is not precluded from treating a petition filed under section 397 as a petition under section 482 and to grant necessary relief, if it is satisfied that it is necessary to do so to prevent an abuse of the process of the Court or for the purpose of securing the ends of justice. Nothing contained in subsection (3) of section 397 can come on the way of doing so, However, this inherent power being extraordinary, must be exercised sparingly and with restraint.

(v) In the case of ***Kamla Devi Vs. Uttam Chand*** [21] *passed by the learned Single Judge of the Himachal Pradesh High Court, paragraph Nos. 7 and 8 reads thus :-*

*"**7.** Moreover, this Court has ample power to treat the present petition under Section 482 Cr.PC, which gives inherent powers to the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. If the present petition is not held to be maintainable at this stage, petitioner would be rendered remediless as she will not have any opportunity to assail the order dated 12.7.2007 passed by the learned Additional Sessions Judge exercising revisionary powers under Section 397 Cr.PC.*

***8.** Undisputedly, powers under Section 482 Cr.PC are required to be used very sparingly, especially, in the circumstances, where court comes to the conclusion that order passed by the court below is perverse on the face of it and is a result of sheer abuse of the process of law. Keeping in view the fact that this petition has remained pending before this Court since 4th October, 2007, and same was admitted on 5th October, 2007, it would not be proper and just to dismiss the same on the ground of maintainability that too after nine years of the admission of the case. Accordingly, in view of the aforesaid discussion, this Court is of the definite view that present petition is maintainable under Section 397 Cr.PC and bar created under Section (3) would not come in her way as far as filing of present petition is concerned. Since prior to filing of this*

21 2016 Cri.L.J. 3297

> *petition, she had not filed any revision petition under Section 397 Cr.PC. Rather, same was filed by respondent No. 3 Uttam Chand. Hence, this court is of the view that this petition cannot be held to be barred under Section 397(3) and same is maintainable in view of the discussion made hereinabove."*

(vi) In the case of ***Khemraj Agrawal and Ors. Vs. State of C.G. and Ors.***[22] *passed by the Chhattisgarh High Court, paragraph No. 110 reads thus :-*

> *" **110.** The quality and content of the revisional jurisdiction of the High Court while dealing with a revision under Section 397 CrPC is not to be equated with that of the Court hearing a criminal appeal, including one referable to the proviso to Section 372 CrPC. Notwithstanding the scope and ambit of Section 401 CrPC, the revisional jurisdiction of the High Court is not to be treated as coextensive with the powers of the Appellate Court as delineated in Section 386 CrPC. This is so, notwithstanding the wider jurisdictional gamut available to the High Court in terms of Section 401 CrPC. It is also sound, as a principle, that distinction has to be maintained between converting an appeal to a revision and converting a revision to an appeal; be it in any jurisdiction which provides for appellate and revisional interference."*

> ***10.*** *In view of the aforesaid decisions on the issue at hand, I appoint Mr. Faiz Merchant, learned Advocate and Counsel practicing in this Court to assist the Court in garnering the legal decisions and to place them before the Court and assist the Court as Amicus Curiae in the present case to determine the question framed in paragraph No. 2 herein above.*

> ***11.*** *Registry is directed to give a copy of all Revision Applications alongwith a compilation of judgments referred to herein above to Mr. Merchant within a period of one week from today.*

> ***12.*** *List the present group of matters together on* ***29th November, 2024****. To be placed under the caption 'For Directions'."*

2. By the above order, I appointed Mr. Faiz Merchant, learned Advocate and Counsel practicing at the Bar as *Amicus Curiae* to assist the Court to answer the following question framed by me in paragraph

22 2018 (4) C.G.L.J. 118

No.2 of the above order in view of parties persuading me to take on record Consent Terms of compromise arrived between the parties in Revision Proceedings under Section 397 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") and consequentially seek setting aside of the conviction and sentence and allow the Applicant to compound the offence:-

Question:-

> *"In Revision Applications under Section 397 of the Code of Criminal Procedure, 1973 wherein challenge is maintained to judgment of conviction for offence under Section 138 of the Negotiable Instruments Act, 1881 passed by the learned Trial Court and/or upheld by the learned Sessions Court in Appeal, whether this Court can accept Consent Terms filed by parties to put an end to the lis between the parties and grant relief of compounding of the offence as a sequitur thereto and on what terms?"*

3. I heard the learned Advocates and learned *Amicus Curiae* on 29.11.2024 and 09.12.2024 at length. The learned Advocates relied upon several decisions / citations of the Supreme Court and various High Courts in addition to the citations referred to in the order dated 19.11.2024 and made their respective submissions. Further citations are continued in seriatim in this judgement in order to avoid reiteration.

4. Revision Applicants before me have filed Revision proceedings under Section 397 of Cr.P.C. with Complainant arraigned as private Respondent. They have urged the Court to take Consent Terms / Settlement Terms / Compromise Terms on record since parties

have reconciled their disputes and do not wish to further continue with Revision proceedings or any proceedings in Court. In effect, parties have finally settled their disputes and urged the Court that on accepting the Consent Terms on record, conviction of Applicant/s by the Trial Court and / or upheld by the Sessions / Appellate Court be quashed and set aside in view of the Consent Terms and Applicants be permitted to compound the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short "**N.I. Act**").

5. Another submission advanced before me is that Consent Terms now arrived at between parties, even though belatedly after conviction pursuant to a full-fledged trial before Trial Court and proceedings in Appeal before Appellate / Sessions Court can be accepted by Court as held by the Supreme Court and the offence be allowed to be compounded in its Revisional jurisdiction under Section 397 of Cr.P.C.

6. Parties have jointly approached this Court by filing Consent Terms and urged the Court to accept them on record in the interest of justice and put a quietus to the matter by forgoing the conviction and sentence in view of the Consent Terms. In some cases, Affidavit of Consent is filed by the Complainant which is placed on record.

7. Learned *Amicus Curiae* and Advocates for parties have addressed the Court for determination of the aforesaid question. I

have endeavoured to capture and reproduce their submissions mad herein below.

8. Before I proceed to advert to the submissions made, briefly stated, the present set of matters are all Revision Applications filed under Section 397 of Cr.P.C.. Hence, at the outset, it would be suitable to delineate the relevant provisions of applicable statutes which would enable me to consider their submissions for deciding the question of law framed by me.

9. The fundamental provision is Section 397 of Cr.P.C. It reads thus:-

> "*397. Calling for records to exercise powers of revision.—*
>
> *(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*
>
> *Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.*
>
> *(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*
>
> *(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.*"

9.1. The aforesaid provision empowers this Court or any Sessions Court to exercise power of Revision as stated in sub-section (1) thereto. Under Section 398 of Cr.P.C., a further power is given to the High Court or the Sessions Court to order inquiry, rather further inquiry through the Magistrate.

10. The next relevant provision is Section 401 of Cr.P.C. which pertains to High Court's powers of revision. This provision is a discretionary provision which confers right on the High Court to exercise any power conferred on a Court of appeal under the said Code. Section 401 of Cr.P.C. reads thus:-

> "*401. High Court's powers of revision.—*
>
> *(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.*
>
> *(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.*
>
> *(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.*
>
> *(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.*
>
> *(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.*"

10.1. In view of sub-section (1) of Section 401, the next relevant provision for consideration is Section 391 of Cr.P.C. It pertains to power of the Appellate Court to take further evidence or direct it to be taken. Section 391 of Cr.P.C. reads thus:-

> "*391. Appellate Court may take further evidence or direct it to be taken.—*
>
> *(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.*
>
> *(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.*
>
> *(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.*
>
> *(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.*"

11. The next relevant provision is Section 482 of Cr.P.C. It pertains to saving of inherent powers of the High Court. Section 482 of Cr.P.C. reads thus:-

> *"482. 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."*

12. Section 320 of Cr.P.C. is also relevant as it deals with compounding of offences under the Indian Penal Code (for short "**IPC**") and lays down the procedure. It refers to Section 401 of Cr.P.C.

Sub-sections (5) and (6) of the aforesaid provision are relevant and they read thus:-

> "*320. Compounding of offences.—*
>
> *(1) to (4) xxxxx*
>
> *(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) & (8) xxxxx*
>
> *(9) No offence shall be compounded except as provided by this section.*"

13. In the backdrop of the above provisions of Cr.P.C. and more specifically when present cases emanate from a conviction under Section 138 of the N.I. Act, the next most relevant statutory provision which comes to the aid of parties and permits them to make Application for seeking compounding of the offence is Section 147 of N.I. Act. Section 147 provides for offences to be compoundable. It was introduced by the Amendment Act 55 of 2002 in the statute. It starts with a non-obstante clause and states that notwithstanding anything contained in the Cr.P.C., every offence punishable under the N.I. Act shall be compoundable (*emphasis supplied*). Section 147 of N.I. Act reads thus:-

> "*147. Offences to be compoundable.—* *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),every offence punishable under this Act shall be compoundable.*

13.1. The statement of objects and reasons of the Negotiable Instruments (Amendment Act 55 of 2002) Act, 1881 is relevant. Clause 4 of the said statement of objects and reasons and the relevant sub-clauses thereunder are reproduced herein below:-

> *"4. Keeping in view of the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, inter alia, the following amendments in the Negotiable Instruments Act, 1881, Namely:--*
>
> *(i) to (vi) xxxxx*
>
> *(vii) to make the offences under the Act compoundable;*
>
> *(viii) to (xi) xxxxx"*

14. There is one more statutory provision which is required to be quoted which is utilised by parties to compromise and get Consent Terms accepted by Court and seek compounding of the offence. It is seen that the High Court Legal Services Committee receives Applications in various categories such as Civil Appeals, Family Court Appeals, Criminal Revisions, First Appeal (MACT) and Execution Petitions of Arbitral Award. When parties approach the High Court Legal Services Committee after effecting a compromise and urge that the said compromise to be accepted / taken on record, then in terms of Section 19(1) of the Legal Services Authority Act, 1987 and the Guidelines issued by this Court in Writ Petition No.3743 of 2021 in the

case of ***Madhukar Baburao Shete Vs. Yogesh Trimbak Shete and Ors.*** decided on 20.08.2024, the High Court Legal Services Committee organizing the Lok Adalat is under obligation to follow the procedure prescribed under Section 20 of the said Act. This is because, cases pending in the respective categories in this Court are required to be listed and placed before the National Lok Adalat in view of possibility of an amicable Settlement / Compromise, *inter se,* between the parties. When such compromised / settled matters are placed before the Lok Adalat which also include CRAs and if they are settled by the parties, then by accepting Consent Terms, the matters are disposed of, resultantly setting aside the order of conviction and sentence and allowing the Applicant to compound the offence. Section 20 of the Legal Services Authority Act, 1987 is therefore relevant and reads thus:-

> "*20. Cognizance of cases by Lok Adalats.—*
>
> *(1) Where in any case referred to in clause (i) of sub-section (5) of section 19—*
>
> *(i) (a) the parties thereof agree; or*
>
> *(b) one of the parties thereof makes an application to the court,for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or*
>
> *(ii) the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat,the court shall refer the case to the Lok Adalat:*
>
> *Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.*

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the Court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a Court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).

14.1. From the above provision, it emerges that when the Lok Adalat makes an Award on the basis of a settlement or compromise arrived at between the parties, it proceeds to dispose of the case on the basis of the said Compromise / Consent Terms / Settlement which necessarily entails taking on record the Consent Terms and setting aside of the conviction and sentence, resultantly compounding of the

offence. In these cases, consent of both parties is a condition precedent for passing of Award of Lok Adalat and such Award is final and binding on all parties. Sub-sections (3), (4) and (5) refer to two crucial terms namely "*compromise*" or "*settlement*". Under Section 21, every Award of the Lok Adalat is deemed to be a decree of a Civil Court and no Appeal lies to any Court against the Award thus putting an end to the *lis* between parties on the basis of the Compromise / Settlement / Consent Terms.

15. In the backdrop of the aforesaid legal provisions, submissions made by the learned Advocates at the Bar to answer the question framed by the Court are as under.

16. Mr. Merchant, learned *Amicus Curiae* appearing alongwith Mr. Faizal F. Shaikh, Advocate has at the outset meticulously taken me through the gamut of the aforementioned legal provisions while emphasizing the ethos and interpretation of each of them. To answer the question framed, he would submit that on conjoint reading of the above provisions and citations referred and relied upon by this Court in its previous order dated 19.11.2024, this Court in its Revisional jurisdiction will have the jurisdiction to take on record the Consent Terms filed by parties and allow the Applicants to compound the offence and resultantly set aside their conviction. The only concern that he would express is whether at this belated stage, after conviction

by Trial Court and pursuant to Appellate Court proceedings i.e. after exhausting the machinery of the Courts and burdening the legal system, would it be prudent to put a quietus to the matter without imposing costs, rather direct deposit of costs to the Applicants.

16.1. He would majorly rely on the provisions of Section 147 of N.I. Act to contend that the said statutory provision is the precursor provision enabling the parties to file Consent Terms. He would submit that Section 147 of N.I. Act begins with a non-obstante clause and states that notwithstanding anything contained in the Cr.P.C., every offence punishable under the N.I. Act shall be compoundable. He would contend that it implies that there is no prohibition in the N.I. Act against compounding of an offence punishable under the N.I. Act. He would submit that in the absence of any such prohibition, once the Court finds that parties have settled the matter by filing Consent Terms, it would be appropriate for the Court to allow Applicants to compound the offence rather than negating such a Compromise / Settlement between parties and force the parties to remain in Court and / or file a quashing petition under Section 482 of Cr.P.C.

16.2. He would submit that a conjoint reading of the provisions of Sections 397 with 401 of Cr.P.C. and Section 147 of N.I. Act would entail that any rejection of a compromise request would come in the way of furthering the cause of justice, particularly where commission

of offence in all these cases is between two private parties and not directly related to the Society at large. He would however express one reservation that though the flavour of settlement needs to be accepted by the Court, but in the larger interest considering the belated stage at which the compromise is effected, Court should consider the facts of each case with respect to its timeline and pass appropriate order as deemed fit for awarding costs, rather he would persuade the Court to award token costs.

16.3. He would submit that the Supreme Court in the case of ***Meters and Instruments Pvt. Ltd.*** (*supra*) after discussing the series of judgements observed that even in the absence of consent, Court can close criminal proceedings against an accused in cases of offence under the N.I. Act, if the accused has compensated the Complainant. He would submit that the though Supreme Court has time and again reiterated that in cases under Section 138 of N.I. Act, accused must try for compounding at the initial stages instead of a later stage, however, there can be no bar to seek compounding of the offence even at a later stage of the proceedings including after conviction, just like the present set of cases wherein after conviction in Revision proceedings, parties have filed Consent Terms. He would submit that this part of the judgement in ***Meters and Instruments Pvt. Ltd.*** (*supra*) has however not been held to be set aside by the Supreme Court in the case of ***In Re: Expeditious Trial of Cases under Section 138 of Negotiable***

Instruments Act, 1881 *(supra)* referred to in my previous order dated 19.11.2024.

16.4. He would submit that under Section 147, all offences punishable under the N.I. Act are compoundable. He would submit that N.I. Act does not lay down the procedure and manner in which the offence can be compounded. He would submit that Section 320 of Cr.P.C. on the contrary lays down the procedure and manner in which offences under IPC can be compounded. He would submit that as observed by the Supreme Court, offence of dishonour of cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of the instrument (as defined under the N.I. Act) and the impact of this offence is usually confined to private parties involved in the commercial transaction. He would submit that in the larger interest of justice and the parties entering into compromise, it is the compensatory aspect of the remedy which should be given priority by the Court over the punitive aspect in such cases.

16.5. He would submit that though compounding would require consent of the Complainant but in a given case, based on its facts, the Supreme Court has exercised its power under Article 142 of the Constitution of India after considering totality of the facts and circumstances in a given case and has been of the considered view that

proceedings in such cases must come to an end. He would fairly submit that this Court does not have this unbridled power.

16.6. However, he would next submit that Sections 397 to 401 of Cr.P.C. confer a sort of supervisory jurisdiction on the higher and superior Courts to correct manifest illegality resulting in gross miscarriage of justice. He would submit that having regard to the statutory provisions of Section 147 of N.I. Act read with Section 320 of Cr.P.C., in view of the compromise arrived at between parties, Applicants in Revision Applications should be permitted by this Court to compound the offence committed under Section 138 of N.I. Act.

16.7. He would submit that the Supreme Court in the case of ***K. Subramanian Vs. R. Rajathi***[23] held that in view of the provisions of Section 147 of N.I. Act readwith Section 320 of Cr.P.C., compromise arrived at between parties can be accepted even after recording of judgement of conviction. He would draw my attention to the Guidelines issued by Supreme Court in the case of ***Damodar S. Prabhu*** (*supra*) and would persuade the Court that there can be no impediment for this Court even in its Revision jurisdiction in accepting the Compromise / Consent Terms between parties. I shall advert to these Guidelines in my findings later herein below as they refer to award of costs in a graded manner to the Applicant / parties depending upon the stage at which compromise is effected.

23 2010 (1) RCR (Criminal) 183

16.8. He would argue that even in Revision proceedings, this Court being the High Court under Section 482 of Cr.P.C. will have *suo motu* power to interfere and accept the compromise and allow compounding of the offence. He would submit that provisions of Section 147 of N.I. Act readwith Sections 397, 401 and 482 of Cr.P.C. would thus enable this Court to accept the compromise, allow compounding of the offence and resultantly set aside the judgement of conviction and sentence to secure the ends of justice.

16.9. He would submit that various High Courts in a catena of decisions after referring to the provisions of Section 147 of N.I. Act read with Sections 397 and 401 of Cr.P.C. have accepted Consent Terms in Revision proceedings, took them on record, allowed compounding of the offence and set aside the conviction and sentence of the Applicant / Accused therein. He would submit that in the larger interest of justice and the parties and the ethos of Sections 138 and 147 of N.I. Act and the Guidelines issued by the Supreme Court in the case of ***Damodar S. Prabhu*** (*supra*), there can be no impediment for this Court in its Revisional jurisdiction to accept the Consent Terms filed by the parties and allow compounding of the offence, even after conviction and resultantly set aside the conviction and sentence and put a complete quietus to the *lis*.

16.10. In support of his above submissions, learned *Amicus* has referred to and relied upon the following decisions of the Supreme Court and various High Courts:- (i) ***Raj Reddy Kallem*** *(supra);* (ii) ***Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Limited***[24]*;* (iii) ***K. Subramanian*** *(supra);* (iv) ***Ram Briksh Singh and Ors. Vs. Ambika Yadav and Anr.***[25]*;* (v) ***Roshan Lal Vs. Tej Ram Thakur*** [26] (Himachal Pradesh HC); (vi) ***Prakash Chandel Vs. Rajeev Chauhan***[27] (Himachal Pradesh HC); (vii) ***Din Dayal Yadav*** (*supra*); (viii) ***Ramesh Chand Vs. Hoshiyar Singh***[28] (Himachal Pradesh HC); (ix) ***Rajat Kumar Vs. Deepan Sharma***[29] (Himachal Pradesh HC); (x) ***Lalit Kumar Vs. Mahant Kumar***[30] (Himachal Pradesh HC); (xi) ***Somi Vs. Ved Ram @ Ved Singh & Anr.***[31] (Himachal Pradesh HC); (xii) ***Khumbiya Ram Vs. HP State Co-op Agriculture & Rural Development Bank***[32] (Himachal Pradesh HC); (xiii) ***Subhash Chander Amrohi Vs. Bank of India***[33] (Punjab & Haryana HC); (xiv) ***Bhai Lal Patel Vs. State of Uttarakhand and Ors.***[34] (Uttarakhand HC); (xv) **Kamal Singh Bisht Vs. State of Uttarakhand and Anr.**[35] (Uttarakhand HC); (xvi) ***Devender Sharma Vs. State NCT of Delhi and Anr.***[36] (Delhi HC); (xvii) ***Shyam***

24 (2023) 10 SCC 545
25 (2004) 7 SCC 665
26 Cri. Revn. No.664 of 2024 - Decided on 03.12.2024.
27 Cri. Revn. No.28 of 2024 – Decided on 29.11.2024.
28 Cri. Revn. No.515 of 2024 – Decided on 27.11.2024.
29 Cri. Revn. No.603 of 2023 – Decided on 26.11.2024.
30 Cri. Revn. No.762 of 2024 – Decided on 21.11.2024.
31 Cri. Revn. No.367 of 2023 – Decided on 19.11.2024.
32 Cri. Revn. No.229 of 2024 – Decided on 18.11.2024.
33 CRR-2798-2011 (O&M) – Decided on 13.11.2024.
34 2024 SCC OnLine Utt 1290
35 2024 SCC OnLine Utt 1138
36 2024 SCC OnLine Del 2064

Sundar Vs. State NCT of Delhi and Anr.[37] (Delhi HC); (xviii) *Joseph Vs. State of Kerala*[38] (Kerala HC); (xix) *Vedu Vs. State of Punjab and Anr.*[39] (Punjab & Haryana HC); (xx) *Lydia Vinita Pais Pinto Vs. State of Goa*[40] (Bombay HC); (xxi) *Mohd. Aftab Vs. State NCT of Delhi & Anr.*[41] (Delhi HC); (xxii) *Ajay Shendge Vs. State of Maharashtra and Anr.*[42] (Bombay HC);(xxiii) *Jiya Ahmad Abdul Rajjak Mulla Vs. State of Maharashtra and Anr.*[43] (Bombay HC); (xxiv) *Prema w/o Dalbahadur Mall Vs. State of Maharashtra and Anr.*[44] (Bombay HC); (xxv) *Santosh s/o Namdevrao Patait Vs. State of Maharashtra and Anr.*[45] (Bombay HC); (xxvi) *Balakrishnan Vs. Damodaran*[46] (Madras HC); (xxvii) *Rajan K. Moorthy Vs. M. Vijayan*[47] (Madras HC); (xxviii) *Ami Lal Vs. Mahavir Prasad Surendra Mohan*[48] (Rajasthan HC); and (xxix) *Shri Otin Panging and Anr. Vs. Shri Nambor Kaman and Ors.*[49] (Gauhati HC).

17. Mr. Raikar, learned Advocate appearing for Respondent (Complainant) in Revision Application Nos.373 of 2016 to 376 of 2016 and Civil Contempt Petition No.510 of 2017 has next argued and supported the submissions made by the learned *Amicus Curiae.* He briefly addressed the Court today and relied on the decisions in the

37 2024 SCC OnLine Del 1168
38 2023 SCC OnLine Ker 7671
39 CRR-1437-2015(O&M) – Decided on 11.04.2023.
40 2022 SCC OnLine Bom 2293
41 2021 SCC OnLine Del 5338
42 2018 SCC OnLine Bom 13270
43 2018 SCC OnLine Bom 5906
44 2011 SCC OnLine Bom 1004
45 Cri. Revn. No.151 of 2011 – Decided on 20.07.2011.
46 2008 (1) MWN (Cr.) DCC 24
47 2008 (1) MWN (Cr.) DCC 185
48 2005 SCC OnLine Raj 194
49 (1990) 2 GLR 314

cases of ***Damodar S. Prabhu*** (*supra*) and ***JIK Industries*** (*supra*) and another decision of the Supreme Court in the case of ***State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Ors.***[50] in addition thereto. He has drawn my attention to paragraph No.22 in the decision of ***Jagmohan Singh Kuldip Singh Anand and Ors.*** (*supra*) decided by the Supreme Court which I should quote here itself. It reads thus:-

> *"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 410 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,*
>
> > *"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court."*
>
> *It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."*

17.1. On the basis of the above, he would submit that in a given case, if necessary, the High Court or Sessions Court can exercise all Appellate powers in view of the provisions of Section 401 of Cr.P.C. He would submit that various Courts have held that Revisional Court has all powers conferred upon the Appellate Court by virtue of powers

50 (2004) 7 SCC 659

contained in Section 397 of Cr.P.C. readwith Section 401 of Cr.P.C. which are provisions enabling the High Court to exercise all powers of Appellate Court. He would submit that provisions of Sections 395 to 401 of Cr.P.C. read together do not indicate that Revisional power can be exercised as second Appellate power. However for limited purpose, Revisional Court can be conferred with powers of an Appellate Court for the purpose of satisfying itself of the legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding in the inferior Court.

17.2. He would submit that when Revision Applications are pending before High Court and parties decide to compromise, one of the following three approaches are open to the Applicant – Accused to be adopted in case of a compromise which are as under:-

(i) Firstly, to challenge the conviction order under Section 482 of Cr.P.C. and file a Criminal Writ Petition for quashing of the impugned order, however this involves re-filing of Revision Application as Quashing Petition since compromise can only be recorded by High Court in its extraordinary jurisdiction. However, he would submit that this Court in its Revision jurisdiction can in a given case convert the said Petition as Petition under Section 482 and pass appropriate order in the larger

interest of justice.

(ii) Secondly, to file Criminal Application in the existing Revision proceedings for compounding of the offence under Section 147 of N.I. Act. He would submit that this is permissible as laid down by the Supreme Court which has observed that the non-obstante clause under Section 147 of N.I. Act will have an overriding effect on the provisions of Cr.P.C. He would submit that Section 147 of N.I. Act does not bar the parties from compounding the offence under Section 138 of N.I. Act even at the appellate stage. He would submit that for following the compounding procedure the Applicant – Accused will be required to file an Application and the same may then be dealt with as per the Guidelines laid down for compounding in the case of ***Damodar S. Prabhu*** (*supra*) which suggests payment of 15% of the transaction amount/fine amount as costs, if Application for compounding is made before the High Court or the Sessions Court. He would submit that compounding provision has been discussed in subsequent judgements of the Supreme Court with respect to the mode and manner of compounding which explains the difference between quashing and compounding of a case. He

would submit that in quashing, Court passes an order to quash the impugned order however in compounding consent of the aggrieved party is required to compound the offence. He would submit that only under Article 142, only Supreme Court can allow compounding even in the absence of consent in the larger interest of justice. In this regard, he has drawn my attention to the decision of the Supreme Court in the case of ***Vinay Nayak Vs. Ryot Seva Sahakari Bank Ltd.***[51] wherein it is held that there can be no reason to refuse a compromise between parties, however, the procedure relating to compounding under Section 320 Cr.P.C. cannot be given a go-by.

(iii) Thirdly, in cases where part of the sentence is clearly undergone / suffered by Applicant / Accused, in those cases on compromise being proposed, Court in its Revisional jurisdiction may modify the sentence without interfering with the findings in the conviction order and accordingly modify it by reducing the sentence to the period already undergone / suffered and record that in view of the settlement arrived at between parties, the case is disposed of. This he would submit is permissible

51 (2008) 2 SCC 305

since under its Revisional jurisdiction, High Court is permitted to secure ends of justice as held by the Delhi High Court in the case of ***Vijay Kumar Vs. Anil Kumar Gupta***[52].

17.3. He would submit that even while exercising Revisional powers, Supreme Court has held that if necessary the High Court or Sessions Court can exercise all appellate powers in view of the wordings of Section 397 of Cr.P.C. readwith the enabling provision of Section 401 of Cr.P.C.. Hence, while supporting the submissions advanced by the learned *Amicus,* he would urge the Court to take the Consent Terms arrived at between parties in CRA Nos.373 of 2016 to 376 of 2016 and Civil Contempt Petition No.510 of 2017, wherein he represents the Complainant and in view thereof allow compounding of the offence and set aside conviction of Revision Applicant therein and put a quietus to the matters. He would submit that in Revision Applications wherein he represents the Respondent (Complainant), if the Compromise / Settlement Terms are perused, it would be evident that despite the original transaction / cheque amount between the parties being much higher (Rs.25,00,000/-), Respondent (Complainant) has agreed to receive a much lower amount (Rs.20,00,000/-) and agreed to the compromise. He would therefore submit that consent and discretion of the Complainant in effecting

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such a compromise be respected by the Court when he agrees to receive a much lesser amount when juxtaposed with the Supreme Court Guidelines calling for deposit of costs of 15% or 20% over and above the said amount as per the decision in the case of ***Damodar S. Prabhu*** (*supra*).

17.4. He would urge the Court to take Consent Terms dated 30.09.2024 in CRA Nos.373 to 376 of 2016 on record. The said Consent Terms are taken on record and marked "X-1" to "X-4" for identification. In such cases, he would submit that compromise should be accepted by Court to put a quietus to the matter. He would further submit that in cases which he represents, both transactional parties are Companies and they had a business relationship and do not involve an individual. On the issue of awarding costs, he would submit that the same is entirely at the discretion of the Court in the facts and circumstances of each case, but would urge the Court to award only token costs if parties have undergone the entire gamut of trial followed by Appeal and at a much belated stage after conviction approached the High Court for effecting a compromise. He would submit that the state machinery is undoubtedly burdened for the trial, appeal and revision proceedings and therefore it would be at the discretion of the High Court to award / impose costs subject to consideration of the timeline, stage and facts in each case.

18. Mr. Raut, learned Advocate appearing for the Respondent – Complainant in CRA No.369 of 2023 has also addressed the Court and made the following submissions:-

18.1. He would submit that on perusal of Section 147 of N.I. Act, it can be fairly conceived that the purport of the said Section is to provide for a prescription so as to compound every offence committed under the N.I. Act, however the said Section does not provide legislative guidance as to how and at what stage can the offence be compounded. He would submit that this legislative void has been largely dealt with by the Supreme Court in the case of ***Damodar S. Prabhu*** (*supra*) where endeavour is made to undo the legal vacuum. He would submit that in the said case, Supreme Court in paragraph No.21 has issued Guidelines required to be followed while compounding offence under N.I. Act. He would submit that as elucidated in Guideline 1(c) laid down therein, it is held that it is well within the jurisdiction of this Court to exercise its powers to effect compounding of offence under N.I. Act while entertaining a Revision Application under Section 397 or Section 401 of Cr.P.C.

18.2. He would submit that the Allahabad High Court in the case of ***Hari Om Vs. State of U.P. and Anr.***[53] while referring to the decision in the case of ***Damodar S. Prabhu*** (*supra*) has taken a similar view and permitted compounding of offence committed under N.I. Act in its

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Revisional jurisdiction. Paragraph Nos.20 to 22 of the said decision are relevant and are reproduced below for immediate reference:-

> *"20. Having regard to the aforesaid position of law, even though the parties have arrived at a settlement after the Appellate Court had upheld the conviction of the petitioner, yet keeping in view the spirit of Section 147 of the NI Act, the offence under Section 138 of the Act can be compounded. Therefore, this is a fit case where cost is required to be waived while compounding the offence. Since the parties have settled their disputes, it is in the fitness of things to close it at this stage itself as the conditions of settlement are mutually accepted between them. The dispute is an inter-se dispute between the parties and by entering into a settlement they have closed the dispute which had arisen between them.*
>
> *21. From perusal of the records and the law laid down by the Apex Court on the subject matter, the present case is a good case for exercising powers by this Court to allow the present revision.*
>
> *22. The present revision is allowed. The conviction and sentence under Section 138 of the N.I. Act stands annulled as this Court intends. The revisionist is acquitted on account of compounding of the offence with the complainant/person affected before the mediation centre of this Court."*

18.3. He would submit that the N.I. Act being a special statute will have primacy over the Cr.P.C. so far as the question of compounding of offence is concerned. He would submit that Section 320 of Cr.P.C. provides for the offences under IPC which can be compounded, however Section 147 of N.I. Act begins with a non-obstante clause ousting the applicability of the provisions of Cr.P.C. He would submit that even if assuming that provisions of Cr.P.C. cannot be given a go-by while compounding an offence, Section 320(6) of Cr.P.C. empowers the High Court and the Sessions Court to compound the offence even while exercising its Revisional jurisdiction.

18.4. He would submit that, the Supreme Court in the case of ***K.M. Ibrahim*** (*supra*) in paragraph No.12 has held that Section 147 of N.I. Act does not bar the parties from compounding an offence under Section 138 of N.I. Act even at the appellate stage of the proceedings.

18.5. He would submit that as Cr.P.C. does not contemplate a Second Appeal from the order of Appellate Court, this Court can act as an Appellate Court even while exercising jurisdiction under Section 397 of Cr.P.C. to reverse the erroneous findings rendered by the Courts below. Hence, while enjoying appellate powers, compromise can be allowed by this Court.

19. Mr. Pabari, learned Advocate for Applicant and Mr. Malpathak, learned Advocate for Respondent in CRA No.625 of 2015 have jointly addressed the Court and would contend that in their case, transaction between parties was on account of a friendly loan between them and that it was an insignificantly small amount and Complainant has expired in the interregnum whereas the Applicant – Accused is a senior citizen. Hence, they would submit that looking into the Guidelines laid by the Supreme Court in the case of ***Damodar S. Prabhu*** (*supra*) while taking on record the compromise, Court should consider the facts and circumstances of each case so as to resultantly do complete justice and put a quietus to the matter and in so far as the facts of their case are concerned should not award costs or in the

alternate award token costs.

20. Mr. Anand Patil, learned Advocate has requested the Court to permit him to address and assist the Court. He does not appear in any of the matters, but has listened to the debate. He would place on record the most recent order of the Supreme Court passed in the case of ***Akanksha Arora Vs. Tanay Maben***[54] on 04.12.2024 and would contend that this Court will have to apply a judicious approach while hearing a Revision Application under Section 397 of Cr.P.C. *vis-a-vis* the power of the High Court under Section 482 of Cr.P.C.. While drawing my attention to paragraph No.7 of the above decision, he would submit that it is held therein that in such cases the nomenclauture of a petition is immaterial and for doing substantive justice, the High Court can always convert a petition under Section 482 Cr.P.C. to a Revision under Section 397 Cr.P.C. and vice versa (*emphasis supplied*). He would submit that as held by the Supreme Court in the case of ***Prabhu Chawla Vs. State of Rajasthan and Anr.***[55] there can be no total ban on exercise of inherent powers where abuse of process of Court or other extraordinary situation warrants exercise of inherent jurisdiction and therefore this Court has ample power in its Revisional jurisdiction to accept Consent Terms, allow compounding of the offence and set aside conviction of the Applicant – Accused.

54 Cri. Appeal arising out of SLP (Cri.) No(s).15909 of 2023 – Decided on 04.12.2024.
55 (2016) 16 SCC 30

21. Dr. Krishnaiyer, learned APP appearing for the State in all CRAs, while referring to the decision of the Supreme Court in the case of ***Harshendra Kumar*** (*supra*) would submit that quashing and compounding of matters are under two different powers of the Court. She would submit that offence under Section 138 of N.I. Act is a civil wrong as held by the Supreme Court in the case of ***B.V. Seshaiah*** (*supra*). She would heavily rely on the decision of the Supreme Court in the case of ***Damodar S. Prabhu*** (*supra*) and the decision of the Single Bench of Himachal Pradesh High Court in the case of ***Din Nath*** (*supra*) and would submit that this Court in its Revisional jurisdiction will have power to take Consent Terms on record and permit compounding of the offence under Section 138 of N.I. Act, resultantly setting aside the conviction and sentence even at such belated stage after conviction, but it would be prudent to award costs as stated in the Guidelines laid down by the Supreme Court in the larger public interest in view of the legal system being used and over burdened by the parties.

22. I have heard the learned Advocates appearing for the Revision Applicants and Respondents as also the learned *Amicus Curiae* and with their able assistance perused the record of each matter as also the plethora of judgements cited on the issue at hand. Submissions made by them have received due consideration of the Court.

23. In view of the above and the imprimatur of the Supreme Court in the judgements cited at the bar, it is seen that provisions of Sections 397, 401 and 320 of Cr.P.C. read alongwith Section 147 of N.I. Act would without doubt enable this Court to utilise its discretion in the given facts and circumstances of the present cases to accept the Consent Terms / Compromise even at this stage much belatedly after conviction. There can be no bar or impediment on this Court exercising its Revisional power alongwith its discretionary power under Section 401 of Cr.P.C. readwith the inherent powers of the High Court under Section 482 of Cr.P.C. to take on record the compromise arrived at between parties in matters which are compoundable having regard to the provisions of Section 147 of N.I. Act.

24. After perusing the above judgements, I have no doubt in coming to the conclusion that in view of the extant power under Section 397 of Cr.P.C., if parties approach the Court with Compromise / Settlement / Consent Terms, the same can be accepted, Applicant – Accused can be allowed to compound the offence and the conviction can be set aside. However, there is one issue regarding directions to the Applicant to deposit costs in a given case which needs to be addressed by me.

25. In the case of ***Damodar S. Prabhu*** (*supra*) the following Guidelines issued by the Supreme Court in paragraph No.21 need to be

therefore considered. The Guidelines read thus:-

> *(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.*

26. From the above, it is seen that for the reasons recorded the Supreme Court has suggested Guidelines for compounding of the offence under N.I. Act at any stage of the proceedings by directing the Accused to pay either 10% or 15% or 20% of the cheque amount by way of costs as a condition precedent as it is an offence of dishonour of cheque and it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. These Guidelines are issued with regard to cheque bounce cases and were framed at the instance of the learned Attorney General urging the Supreme Court to frame such Guidelines as a graded scheme for imposing costs on parties who

unduly delay compounding of the offence and approach the Court at a much belated stage. We cannot lose sight of the fact that compounding can be done only with the consent of the Complainant. It is seen that submissions before the Supreme Court were that Court calling upon deposit of costs will act as a deterrent for delayed composition and free and easy compounding of offences at any stage, however belated it may be, even after conviction otherwise it will give an incentive to the drawer of the cheque for delay in settling the case for years together. This will not only overburden the legal system, but give an unfair advantage to the Accused to tire out the Complainant and then at a much belated stage agree to compromise. The Supreme Court considered the submission of the learned Attorney General that Application for compounding made after several years post conviction by way of filing Consent Terms not only results in a burden on the system but the Complainant is also deprived of effective justice. The adage "*Justice delayed is Justice denied*" therefore holds true in such circumstances. The Supreme Court therefore framed the Guidelines by stating that if such Application for compounding of the offence is made at the first or second hearing of the case, it may be allowed by the Court without imposing any costs on the Accused, but if it is made at any subsequent stage thereafter, compounding can be allowed subject to condition that Accused will be required to pay 10% of the cheque amount to be deposited as a condition precedent for compounding

with the Legal Services Authority, or such Authority as the Court deems fit. It further held that if Application for compounding is made before the Sessions Court (in Appeal) or before the High Court in Revision or Appeal, such compounding may be allowed on the condition that Accused pays 15% of the cheuqe amount by way of costs and if the Application for compounding is made before the Supreme Court, the figure of costs would increase to 20% of the cheque amount. It is also clarified by the Supreme Court that costs imposed in accordance with these Guidelines should be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place. It is seen that the Supreme Court was clearly conscious of the fact that judicial endorsement of the above Guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain and therefore held that it was so because Section 147 of N.I. Act does not carve out Guidelines on how to proceed with compounding of offences under the N.I. Act. The Supreme Court also explained that the scheme for compounding of offences contemplated under Section 320 of Cr.P.C. cannot be followed in a strict sense and in view of the legislative vacuum, there was no hurdle to the endorsement of the suggestions made by the learned Attorney General which were primarily designed to discourage litigants from unduly delaying the compounding of the offence in cases involving Section 138 of N.I. Act. The Supreme Court held that even

though the imposition of costs by the Competent Court is a matter of discretion, the scale of costs was suggested in the interest of uniformity. It however also held that the Competent Court can reduce the costs with regard to the specific facts and circumstances of each case by recording reasons in writing for such variance.

27. It is seen that if parties make an Application for compounding, then applying the above Guidelines, costs will have to be directed to be paid. Hence to circumvent payment of costs, parties do not approach the Court for compounding of the offence directly. The Applicant / Accused first settles the matter with the Complainant, enters into Consent Terms and files them in Court and seeks orders for putting an end to the *lis*, thus indirectly avoiding to pay costs under the above Guidelines. The result is the same in both cases, but in this manner by filing Consent Terms, payment of costs is circumvented. In most of the cases of various High Courts cited at the bar, without reference to the Guidelines, parties have been allowed to settle and Consent Terms are taken on record and the *lis* is ended.

28. Keeping in view the above imprimatur of the Supreme Court, in the case of ***Damodar S. Prabhu*** (*supra*), I am of the opinion that as held by the Supreme Court and submissions made by the learned *Amicus Curiae*, Mr. Raikar and the learned APP, costs can undoubtedly be directed to be deposited in cases where Consent Terms are filed at a

belated stage, and I am of the opinion that deposit of costs cannot be ignored or over-looked if parties approach the Court to put an end to the *lis*. However, as held by the Supreme Court in the same decisions, the Court hearing the matter can reduce the costs with regard to the specific facts of each case by recording the reasons in writing for such variance. Parties before me have urged the Court to therefore award nominal or token costs. This is so because when parties compromise and enter into a settlement, it is suggested that the Court should consider and also ensure that the settlement is fructified, rather than it is rendered unfruitful. If the Compromise / Settlement / Consent Terms are not accepted in matters under Section 138 of N.I. Act despite the imprimatur of Section 147 of N.I. Act which does not lay down any specific procedure, then it would result in the litigation and the *lis* being continued in the Court endlessly. This is certainly not the intention of the legislature in enacting Section 147 of N.I. Act.

29. Another reason which comes to my mind is that if the cheque amount between the parties is on the higher side or large, then implementation of the Guidelines and direction of deposit of 15% or 20% of the said cheque amount would burden the drawer / Applicant / Accused and in a given case may even deter the parties to approach the Court for compromise in which case it would resultantly lead to breakdown of the settlement or compromise. Hence, the Court has to proceed with a justice oriented and balanced and discretionary

approach while considering a compromise and directing deposit of costs. This may be one of the reason as to why Application for compounding of such offence is not filed by parties directly in this Court and they choose to tender Consent Terms and persuade the Court to take them on record and seek compounding of the offence in Revision proceedings to avoid paying costs suggested under the Guidelines in the case of ***Damodar S. Prabhu*** (*supra*) alluded to herein above. This is precisely the reason why I have quoted the provisions of the Legal Services Authority Act, 1987 which enable the parties to tender Consent Terms and put an end to their *lis* in such Section 138 matters without being burdened by the unpleasant spectre of costs in Lok Adalat proceedings.

30. Hence, I am in complete agreement with the submissions made by the learned *Amicus Curiae* as also Mr. Raikar. Direction for deposit of costs in such matters which are compromised belatedly should be awarded by the Court as held by the Supreme Court, since such an Application for compounding / compromise made after several years not only results in the burdening of the system but the Complainant is also deprived of effective justice at the right time. I am of the opinion that the proposition of direction to deposit costs will also curb the tendency of litigants to protract litigation and who choose to enter into a compromise belatedly as a means to resolve their longstanding dispute despite their conviction. However, if the parties

apply to the Court, then in the facts of the given case, if the Court has to award lesser costs as suggested in the Guidelines alluded to herein above, then it would be at the discretion of the Court, provided appropriate reasons are given for the same.

31. From the above, it is derivated that the N.I. Act provides no explicit procedure and Guidelines as to when such compounding can or cannot be done and whether compounding can be done at the instance of the Complainant or with leave of the Court. Further the Court can reduce the costs having regard to the facts and circumstances of each case by recording appropriate reasons on hearing the parties.

32. In this regard, the decision of the Supreme Court in the case of ***Ajay Kumar Radheyshyam Goenka*** (*supra*) can be fruitfully referred to. Paragraph Nos.94, 95 and 96 are relevant and are quoted herein below:-

> "***94.*** *"Compounding" and "quashing" are not synonymous terms. In law, they have different meanings and consequences. They arise from different situations and operate in different fields and stages. There is no apparent legal interdependence or interlink to the extent that one could exist only if the conditions of the other were satisfied or vice- versa. Quashing is one of the facets of inherent powers, while compounding of an offence being a statutory expression contained under Section 320 CrPC is entirely a different concept.*
>
> ***95.*** *The expressions "compromise" and "compounding" are not synonyms in criminal jurisprudence even though these expressions are usually used without any distinction. Any dispute can be compromised between the parties if the terms are not illegal. But only a compoundable offence allowed by law can be compounded. A dispute relating to a crime can be compromised even before the case is registered, and in that case, victim of the crime may refuse to file a complaint. But if*

> *in spite of compromise, if he files a complaint and court finds that what is compromised is a compoundable offence, depending upon the facts and circumstances of each case Magistrate can refuse to take cognizance, or acquit the accused as offence was compounded or the complaint can be quashed in proceedings under Section 482 of the CrPC."*
>
> *96. In a compromise, consensus between the parties to give and take is more important and in a compounding, decision of the victim of the offence not to prosecute and not to continue with prosecution is more important."*

33. The decision of the Supreme Court in the case of ***JIK Industries Limited and Others*** *(supra)* follows the decision of the Supreme Court in the case of ***Damodar S. Prabhu*** (*supra*) and holds that there is no reason to refuse compromise between the parties in view of the scope of Section 147 of N.I.Act.

34. As against this, it is seen that where such pending 138 matters are settled before the Lok Adalat, the Consent Terms / Compromise / Settlement are accepted and taken on record and Guidelines laid down by the Supreme Court for awarding costs are infact not implemented. In such cases which are settled on the basis of Consent Terms and Compromise between parties, there are no orders passed for deposit of costs as per the Guidelines given in the case of ***Damodar S. Prabhu*** (*supra*) and indirectly the Applicant / Accused benefits.

35. In view of my above observations and findings and the ambit and scope of Section 147 of N.I. Act and the imprimatur of the conjoint provisions of Sections 397, 401, 320(6) and 482 of Cr.P.C. and the

above referred citations of the Supreme Court and various High Courts, I answer the question framed by me in paragraph No.2 of this judgement in the affirmative, subject to deciding the deposit of costs by the Applicants as urged before me in each of the matters on their own merits and the submissions made by the learned Advocates for the parties before me.

36. In the present set of cases before me, learned Advocates for all parties have urged that the facts and circumstances be considered by the Court in each of the cases and on their own merits and the timeline involved, appropriate token costs be levied on the Applicants if the Court is of the view that costs should be directed to be deposited. Hence, I have heard the learned Advocates on the facts and circumstances of their respective cases separately as they have chosen to address the Court on the issue of deposit of costs and findings in each of the above cases and my findings are given herein below:-

Criminal Revision Application Nos.373 of 2016, 374 of 2016, 375 of 2016, 376 of 2016 and Civil Contempt Petition No.510 of 2017:-

37. In view of the above, the common Consent Terms given by parties in CRA Nos.373 of 2016, 374 of 2016, 375 of 2016, 376 of 2016 and Civil Contempt Petition No.510 of 2017 dated 30.09.2024 are taken on record and marked "**X-1**" for identification. In this case, it is seen that the cheque amount was approximately Rs.25,00,000/-

whereas parties have reconciled and filed Consent Terms and Complainant has agreed to receive Rs.20,00,000/- in full and final settlement of the dispute in entirety. The Consent Terms state that Complainant has already received Rs.13,62,500/- whereas the balance amount which is deposited by Applicant before the City Civil Court at Bombay in Suit No.2023 of 2014 shall be withdrawn by the Complainant. Considering the findings in this judgement and the fact that the Consent Terms are filed much belatedly at the Revision stage, I am inclined to direct the Applicants in the aforesaid four CRAs to deposit costs of Rs.20,000/- @ Rs.5,000/- in each CRA due and payable to the Maharashtra State Legal Services Authority for taking the Consent Terms on record, setting aside the conviction and sentence of Applicants and also allowing the Applicants to compound the offence. The costs as directed in each of the four matters shall be deposited with the Maharashtra State Legal Services Authority within a period of four weeks from today. Considering the submissions made by Mr. Raikar and more importantly the timeline in the above matters, the aforesaid costs are directed to be deposited by Applicants in view of the legal system having been burdened with the Trial Court proceedings, Appeal Court proceedings and the present Revision Court proceedings.

37.1. CRA Nos.373 of 2016, 374 of 2016, 375 of 2016 and 376 of 2016 are allowed in terms of Consent Terms. Accordingly, Civil

Contempt Petition No.510 of 2017 is disposed.

Criminal Revision Application No.369 Of 2023:-

38. In CRA No.369 of 2023, it is seen that the amount of dishonoured cheque is Rs.25,753/- and the fine amount imposed by the learned Trial Court is Rs.27,000/-. Parties have filed Consent Terms dated 09.12.2024 stating that they have settled their disputes *inter se* and Applicant has agreed to pay an amount of Rs.1,20,000/- by way of one time settlement amount to Respondent - Original Complainant. In view of the above, the Consent Terms given by parties in CRA No.369 of 2023 are taken on record, accepted by Court and marked "**X-2**" for identification.

38.1. Accordingly, compounding of the offence by the Applicant is allowed by the Court and conviction and sentence imposed by the impugned orders on the Applicant is quashed and set aside. Considering the facts in the case, I am inclined to direct the Revision Applicant to deposit costs of Rs.2,000/- with the Maharashtra State Legal Services Authority to be paid within a period of four weeks from today.

38.2. CRA No.369 of 2023 is allowed in terms of Consent Terms. Accordingly, CRA No.369 of 2023 is disposed.

Criminal Revision Application No.152 of 2007 alongwith Interim Application No.3830 of 2024:-

39. In this CRA, Interim Application No.3830 of 2024 is filed for bringing legal heirs of Respondent No.2 – Complainant who expired on 16.08.2023 on record. The death certificate is appended to the Interim Application. Respondent Nos.2(a) and 2(b) are original Complainant's widow and son. Though there is a slight delay in filing the Interim Application, in the interest of justice, delay deserves to be condoned and legal heirs are required to be brought on record for continuation of the Revision proceedings. Interim Application No.3830 of 2024 is a composite Application seeking condonation of delay for approaching the Court, setting aside abatement if any, and bringing the legal heirs on record.

39.1. I have perused the Interim Application. For the reasons stated in the Application, Interim Application No.3830 of 2024 stands allowed in terms of prayer clauses (a), (b) and (c). Delay stands condoned. Abatement stands set aside. Legal heirs are permitted to be brought on record. Amendment is permitted to be carried out forthwith. Reverification stands dispensed with. Court Sheristedar shall permit the Applicant to carry out amendment in Court. Interim Application No.3830 of 2024 stands allowed and disposed.

39.2. In CRA, legal heirs of Complainant i.e. his widow and son have filed two separate Affidavits both dated 25.08.2024. Parties to the dispute are real brothers. One of the brother i.e. original

Complainant who was Respondent No.2 has expired. The amount of cheque which was dishonoured was Rs.2,00,000/-. Revision Applicant has deposited the entire fine amount as per the order of the Trial Court of Rs.2,00,000/- alongwith interest which amounts to Rs.3,08,725/- in the District Court, Pune. Both legal heirs of original Complainant have stated in their Affidavits that they have received the aforesaid amount alongwith all accrued interest. Their Affidavits are filed with Interim Application No.3830 of 2024 on record. In these facts, the CRA is allowed to be compromised and settled by taking on record the Affidavits of the legal heirs.

39.3. In the above facts and circumstances, I am inclined to direct the Revision Applicant to deposit costs of Rs.2,000/- with the Maharashtra State Legal Services Authority to be paid within a period of four weeks from today. Subject to the deposit of costs as directed, the conviction and sentence of Revision Applicant is quashed and set aside and he is allowed to compound the offence on the above terms and conditions.

40. CRA No.152 of 2007 is allowed and disposed in the above terms.

Criminal Appeal No.1543 of 2003 with Criminal Application No.1344 of 2015 alongwith Criminal Revision Application No.38 of 2007 with Criminal Application Nos.413 of 2016 and 565 of 2016:-

41. In CRA No.38 of 2007, conviction of Applicant – Accused under Section 420 of IPC passed by the Trial Court and upheld by the Sessions Court is under challenge. Companion Criminal Appeal No.1543 of 2003 is filed by Complainant against acquittal of accused for offence under Section 138 of N.I. Act. In these matters, parties have amicably settled the matter and filed Consent Terms dated 16.12.2024. The Consent Terms are taken on record and marked "**X-3**" for identification. It is seen that the dispute between the parties dates back to 1999. The amount of cheque was Rs.4,00,000/-. It is stated that the cheque amount alongwith the fine amount has been deposited in 2007 as stated in Consent Terms. Parties have agreed that Complainant shall receive the said deposited amount of Rs.4,05,000/- alongwith all accrued interest thereon. Both the above matters are disposed of in terms of the Consent Terms between the parties.

41.1. In the facts and circumstances of the present case, I am inclined to direct Applicant to deposit costs of Rs.3,000/- with the Maharashtra State Legal Services Authority to be paid within a period of four weeks from today. Accordingly, compounding of the matter is allowed. Conviction and sentence of the Applicant is quashed and set aside.

41.2. The deposited amount of Rs.4,05,000/- alongwith all accrued interest shall be paid over to the Complainant by the Registry

of this Court / Court where the amount is deposited on production of a server copy of this judgement. Registry shall not insist on a certified copy of this order.

41.3. CRA No.38 of 2007 is allowed in the above terms and Criminal Appeal No.1543 of 2003 is accordingly disposed of in view of the Consent Terms. In view of the disposal of CRA and Criminal Appeal, pending Criminal Application Nos.1344 of 2015, 413 of 2016 and 565 of 2016 are accordingly disposed.

Criminal Revision Application No.625 of 2015:-

42. In CRA No.625 of 2015, parties have filed Consent Terms dated 20.12.2024 as they have amicably settled the matter. In this case, it is seen that the amount of dishonoured cheque is Rs.80,000/- and the Trial Court has convicted the Applicant to suffer R.I. for a period of one month and to pay fine of Rs.1,00,000/- . The judgement of the Trial Court was challenged before the Appeal Court and the Appeal Court has partly modified the sentence. At this juncture, parties have filed Consent Terms to put an end to the *lis.* Parties have agreed that the amount of Rs.30,000/- deposited with the JMFC Court, Thane in SCC No.4709 of 2012 and the amount of Rs.70,000/- deposited in this Court shall be withdrawn unconditionally by the legal heirs of the original Complainant i.e. Respondent Nos.2(a) to 2(d) herein who have been brought on record pursuant to this Court's order

dated 09.07.2024. The Consent Terms are taken on record, accepted and marked as "**X-4**" for identification and accepted by the Court.

42.1. On hearing Mr. Pabari and Mr. Malpathak and perusing the record of the case, in the above facts and circumstances on the basis of the Consent Terms, I am inclined to direct the Revision Applicant to deposit costs of Rs.1,500/- with the Maharashtra State Legal Services Authority to be paid within a period of four weeks from today. Subject to deposit of costs as directed, the conviction and sentence of Revision Applicant is quashed and set aside and he is allowed to compound the offence on the above terms and conditions. Registry of the Trial Court and this Court where the above amounts of Rs.30,000/- and Rs.70,000/- are deposited shall permit the Respondent Nos.2(a) to (d) to withdraw the above amounts either in the name of Respondent Nos.2(a) i.e. Suhasini Sudhir Sakpal on a server copy of this judgement placed before them without insisting on certified copy and shall transfer the above amounts alongwith all accrued interest in their Bank Account within one week from the date of presentation of this judgement / order.

42.2. CRA No.625 of 2015 is allowed and disposed in the above terms.

Criminal Revision Application Nos.474 of 2007 and 475 of 2007.

43. Mr. Ingawale, learned Advocate appears for the Applicants, who are original Accused in CRA Nos.474 of 2007 and 475 of 2007. He would submit that pursuant to the twin orders dated 07.08.2024 in the above CRAs, the matter between the parties was referred to the District Legal Services Authority, Kolhapur for mediation. He would submit that the Civil Judge Senior Division has successfully completed mediation between the parties and placed on record two separate Mediation Reports, both dated 04/05.10.2024 stating that the matters have been amicably settled between the parties and parties have submitted a Compromise *Pursis.* I have perused the Compromise *Pursis* appended to the Mediation Reports.

43.1. Mr. Ingawale would submit that if the common Compromise *Pursis* dated 04.10.2024 is seen, it is stated therein that parties have agreed to settle the matter on terms mentioned therein. It is seen that conviction of sentence is rigorous imprisonment for 3 months and to pay fine of Rs.3,000/-. Thereafter parties have reconciled their differences, but on what terms they have settled or if any amount is paid is not stated in the Compromise *Pursis*. However, the dispute between the parties dates back to the year 2000 and since then they have been in the Court, rather various Courts upto the Revision stage in this Court. Compromise *Pursis* is signed by both parties i.e.

Applicants and Complainants.

43.2. In that view of the matter and the above judgement, after hearing Mr. Ingawale and perusing the record, I am inclined to take the Consent Terms on record and accept them and award costs of Rs.3,000/- against the Revision Applicant in each matter to be paid and deposited by them / Applicants with the Maharashtra State Legal Services Authority as costs for considering the request of the Applicants / parties to take the Compromise *Pursis* on record and allow Applicants to compound the offence. Subject to payment of costs of Rs.3,000/- which shall be paid within a period of four weeks from today as directed, the conviction and sentence of the Applicants in CRA Nos.474 of 2007 and 475 of 2007 is quashed and set aside.

43.3. Accordingly, CRA Nos.474 of 2007 and 475 of 2007 are allowed and disposed in terms of the Compromise *Pursis* and the Mediation Reports in the above terms.

Criminal Revision Application No.156 of 2015 and Criminal Revision Application No.158 of 2015:-

44. Mr. Tadake, learned Advocate appears for the Applicant, who is original Accused and Mr. Kadam, learned Advocate appears for Respondent – Complainant in CRA Nos.156 of 2015 and 158 of 2015. They have tendered across the bar common Consent Terms dated 17.12.2024 entered into between parties and would submit that the

parties have settled the matter amicably. From perusal of the Consent Terms, it is seen that Applicant has agreed to pay Rs.11,00,000/- as full and final settlement amount to the Respondent – Complainant in three tranches as delineated in the Consent Terms.

44.1. In that view of the matter and the above judgement, I am inclined to take the Consent Terms on record. Common Consent Terms dated 17.12.2024 are taken on record, accepted and marked "**X-5**" for identification. Considering the facts of this case and after hearing Mr. Tadake and Mr. Kadam and perusing the record, I award costs of Rs.5,000/- in each CRA to be paid and deposited by the Applicant with the Maharashtra State Legal Services Authority as costs for considering the request of the Applicant / both parties to take the common Consent Terms on record and allow Applicant to compound the offence. Subject to payment of costs as directed above which shall be paid within a period of four weeks from today, the conviction and sentence of the Applicant in CRA Nos.156 of 2015 and 158 of 2015 is quashed and set aside. Liberty to withdraw the amount of Rs.3,00,000/- as stated in clause 3(b) of the Consent Terms from this Court alongwith all accrued interest. Registry shall act on a server copy of this judgement.

45. Accordingly, CRA Nos.156 of 2015 and 158 of 2015 are allowed and disposed in the above terms.

Criminal Revision Application No.380 of 2002:-

46. In so far as CRA No.380 of 2002 is concerned, on 07.10.2024, after hearing Mr. More a detailed order was passed by this Court. He would submit that Complainant i.e. private Respondent in this Application is not traceable and all attempts made by Applicant / his Advocate to serve Complainant have been futile. The remark returned on the service effected through Court states that Complainant is not found at the given address and he has sold his premises and his whereabouts are not known for the last 12 years. Mr. More would submit that in this case apart from sentence of till rising of the Court which is served there is fine amount awarded by Court of Rs.7,00,000/-. He would submit that out of the total fine amount, an amount of Rs.2,50,000/- has already been deposited by Applicants with Court as far back as in 2002. He would submit that Applicants are ready and willing to deposit the balance fine amount immediately in Court as and when directed by Court. He would submit that in the absence of Complainant this Court should consider the facts in the case and allow compounding of the offence. In the above distinct facts request made by the Applicants will have to be heard and decided by the Court separately. I need to consider whether Advocate from the Legal Aid is required to be appointed in this case for the Complainant. That apart I would also like to hear the learned APP for the State in the above case to decide about the amount already deposited and

proposed to be deposited by Mr. More since Complainant is not available before Court. Considering that in view of the judgement passed today in the above matters, this Court will have to consider the present Applicant's case on its own facts and merits in the absence of the Complainant and his consent.

47. Hence, in view of the above peculiar facts, list CRA No.380 of 2002 separately for hearing on **14th January 2025**.

Criminal Revision Application No.585 of 2002:-

48. In so far as this CRA is concerned, it is seen that Advocate has been appointed through Legal Aid to represent and espouse the cause of Applicant. Conviction by Trial Court in this case is to pay fine of Rs.3,000/- and in default suffer simple imprisonment for 15 days. Applicant / Accused pleaded guilty before the Trial Court. Trial Court did not order payment of any compensation. Complainant being aggrieved filed CRA No.788 of 2002 before Sessions Court on the ground that leniency was shown to Accused by the Trial Court while passing the sentence. Sessions Court by order dated 23.04.2002 allowed the Appeal and remanded back the matter to the Trial Court with a direction to invoke provisions of Section 357(3) of Cr.P.C. and thereafter pass an appropriate order.

48.1. On remand Trial Court passed judgement and order dated 16.08.2002 directing Applicant / Accused to pay Rs.70,00,000/- to Complainant by way of compensation and in default suffer simple

rigorous imprisonment for one year. Accused filed Criminal Appeal No.125 of 2002 before Sessions Court. By order dated 17.10.2002, Appeal was dismissed. Against the said dismissal order dated 17.10.2002 Applicant has filed the present CRA. In view of the judgement passed today and absence of Complainant i.e. private Respondent No.2 before Court, this CRA will have to be considered separately on its own merits and facts. It cannot be allowed to be settled or compromised in the absence of the Complainant.

48.2. Hence, in view of the above distinct facts, CRA No.585 of 2002 shall be listed separately for hearing on **14th January 2025**.

49. This Court appreciates the assistance rendered by Mr. Faiz Merchant, learned *Amicus Curiae* alongwith Mr. Faizal Shaikh, learned Advocate, Mr. Raikar, Mr. Raut and Dr. Krishnaiyer, who have ably assisted this Court for deciding the above question of law.

50. In view of the above judgement, CRA Nos.373 of 2016, 374 of 2016, 375 of 2016, 376 of 2016 and Civil Contempt Petition No.510 of 2017; CRA No.369 of 2023; CRA No.625 of 2015; CRA No.152 of 2007 with IA No.3830 of 2024; Criminal Appeal No.1543 of 2003 with Criminal Application No.1344 of 2015; CRA No.38 of 2007 with Criminal Application Nos.413 of 2016 and 565 of 2016; CRA Nos.474 of 2007 and 475 of 2007; CRA Nos.156 of 2015 and 158 of 2015 stand disposed.

Ajay

[MILIND N. JADHAV, J.]