IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

**CRIMINAL APPLICATION (APL) NO. 709/2020**

1. Sau. Maya Sanjay Khandare,
   Aged 38 years, Occ. Household,
   R/o. Chikhli gate, Murtizapur, District Akola

2. Rupesh Shrikrushna Kale,
   Aged about 28 years, Occ. Labourer,
   R/o. Chikhli gate, Murtizapur, Tq. Murtizapur,
   District Akola

..APPLICANTS

-vs-

State of Maharashtra,
through Police Station Officer,
Murtizapur, Tq. Murtizapur, Dist. Akola. ..NON APPLICANT

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Shri Siddhant Ghatte, Advocate for applicants.
Shri S. Y. Deopujari, Public Prosecutor for non-applicant/State.
Shri Anil S. Mardikar, Senior Advocate with Ms Akshaya Kshirsagar, Shri P. R. Agrawal, Shri S. V. Sirpurkar, Shri Sahil Dewani, Shri S. P. Bhandarkar, Ms Nidhi Dayani, Shri Yash Venkatraman and Shri Vivek Bharadwaj, Advocates also addressed the Court.

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CORAM : A. S. CHANDURKAR, VINAY JOSHI and N. B. SURYAWANSHI JJ.

Date on which the arguments were heard : 16.12.2020
Date on which the judgment was pronounced : 05.01.2021

Judgment : (Per A. S. Chandurkar, J.)

The contentious issue as regards the scope of power exercisable under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') when a prayer is made for quashing criminal proceedings/conviction at the instance of a convict after his conviction for a non-compoundable offence on account of settlement between the convict and the victim/complainant falls for determination before this larger bench.

**Decisions leading to the reference :-**

2. At the outset we may refer to the decisions that have led to making of the present reference.

In Criminal Application No.0382 of 2018 (Udhav Kisanrao Ghodse Vs. State of Maharashtra) the accused were tried for having committed offence punishable under Section 323 of the Indian Penal Code (for short, 'the Penal Code'). In addition the accused no.1 was convicted for committing offence punishable under Sections 447 and 354 of the Penal Code. The order of conviction was challenged before the Sessions Court by preferring an appeal. During the pendency of the appeal, the accused and the informant arrived at a compromise and the said parties approached this Court under Section 482 of the Code especially in the backdrop of the fact that the offence under Section 354 of the Penal Code was non-compoundable. The Division Bench at Aurangabad, after referring to the decision of the Full Bench in ***Abasaheb Yadav Honmane Vs. State of Maharashtra 2008 (2) Mh.L.J.856*** as well as decision in ***Gian Singh*** **Vs.** ***State of Punjab and anr. (2002) 10 SCC 303,*** vide its judgment dated 26.02.2018 proceeded to hold that since the parties had decided to maintain good and cordial relations in future and such thought was necessary for the society, inherent powers under Section 482 of the Code were required to be invoked. Accordingly the informant was permitted to compound all the offences including the one under Section 354 of the Penal Code. Consequently the judgment of conviction recorded by the learned Magistrate was set aside.

In Criminal Application (APL) No.750/2019 (Ajmatkhan S/o. Rahematkhan, & Anr. Vs. State of Maharashtra) the accused had been convicted by the learned Magistrate for the offence punishable under Sections 354 and

452 of the Penal Code. The appeal preferred by the convicts came to be dismissed by the Sessions Court. Thereafter the convicts and the informant approached this Court under Section 482 of the Code and by relying upon the decision in ***Udhav K. Ghodse*** (supra) sought quashing of the entire proceedings. The Division Bench at Nagpur by its order dated 06.08.2019 relying upon the said judgment and finding such approach necessary for the society permitted the informant to compound the offence punishable under Sections 354 and 452 of the Penal Code. The judgment of conviction passed by the learned Magistrate as well as the judgment of the Sessions Court in appeal came to be set aside and the convicts were acquitted of all the offences.

Thereafter in Criminal Application (APL) No.1028/2019 (Shivaji Haribhau Jawanjal Vs. State of Maharashtra) an accused who was prosecuted for the offences punishable under Sections 323, 354, 452 and 506 of the Penal Code came to be convicted by the learned Magistrate. The conviction was maintained by the Sessions Court in the appeal. A revision application challenging the order of conviction was preferred by the convict and was pending before the learned Single Judge. The convict and the complainant then approached this Court jointly under Section 482 of the Code on the ground that they had arrived at a settlement and with a view to maintain cordial relations they sought invocation of jurisdiction of this Court. The Division Bench at Nagpur by its judgment dated 12.02.2020 after referring to the judgment of the Division Bench in ***Kiran Tulshiram Ingale vs. Anupama P. Gaikwad and Ors. 2006 (2) Mh.L.J.(Cri) 402*** held that the power under Section 482 of the Code for quashing the proceedings could be exercised even after conviction of an accused. After referring to the aspect of reformation of an offender and as it was

found that the complainant desired to pardon the accused, inherent powers under Section 482 of the Code were invoked to secure the ends of justice. Accordingly the said application came to be allowed by quashing the order of conviction.

3. In Criminal Application (APL) No.709/2020 (Maya Sanjay Khandare and anr. Vs. State of Maharashtra) a report was lodged against the accused on the basis of which offence was registered under the provisions of Sections 354-A, 354-D and Section 506 of the Penal Code along with Section 3(1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused came to be convicted by the Sessions Court on 29.11.2019. The convict preferred an appeal in this Court which was pending. On 17.08.2020 an affidavit was sworn by the convict stating therein that since the informant and the convict were residing in the same locality and an apology had been tendered to the informant through the mother of the convict, the jurisdiction under Section 482 of the Code be invoked for quashing and setting aside the first information report as well as the judgment of conviction passed by the Sessions Court. On behalf of the applicants reliance was placed on the decisions in ***Udhav Ghodse, Ajmatkhan*** *and* ***Shivaji Haribhau Jawanjal*** (supra). The Division Bench after referring to the decisions of the Hon'ble Supreme Court in ***Gian Singh*** (supra), ***Narinder Singh and ors. Vs. State of Punjab, (2014) 6 SCC 466*** and ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and ors. Vs. State of Gujrat and anr. (2017) 9 SCC 641*** was of the view that exercise of power under Section 482 of the Code for quashing and setting aside an order of conviction has to be rarely exercised rather than being routinely exercised. Such power

was to be invoked in exceptional circumstances and for offences which were not against the society. The same could not be invoked merely on the ground of settlement between the parties. The learned Judges comprising the Division Bench found themselves unable to agree with the proposition that in cases which have resulted in conviction of the accused after due trial on a settlement between the accused and the complainant/victim an application for settlement could be entertained and the conviction itself could be quashed as was done in the aforesaid cases. In view of such disagreement the Division Bench framed two questions and sought a reference to be made to the larger Bench for answering the same. The questions framed are as under :

> *(A) In a prosecution which has culminated in a conviction, whether the power u/s 482 Cr.P.C. ought to be exercised for quashing the prosecution/conviction altogether, (instead of maintaining it and considering the issue of modification of the sentence) upon a settlement between the convict and the victim/complainant ?*
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> *(B) Whether the broader principles/parameters as set out in Gian Singh vs State of Punjab and another (2012) 10 SCC 303, Narinder Singh vs. State of Punjab (2014) 6 SCC 466 and Parbatbhai Aahir and others vs. State of Gujrat (2017) 9 SCC 641 have been correctly applied in deciding Udhav Kisanrao Ghodse, Ajmatkhan Rahematkhan and Shivaji Haribhau Jawanjal ?*

With a view to seek answers to aforesaid questions, the larger Bench has been constituted and accordingly the matter was placed before us.

## Submissions by learned counsel:

4. On behalf of the applicants in Criminal Application (APL) No.709/2020, Shri Siddhant Ghatte, learned counsel submitted that there was no embargo on the exercise of jurisdiction under Section 482 of the Code to entertain such application for quashing of the criminal proceedings/conviction in

view of the fact that an appeal challenging the order of conviction had the effect of continuation of the trial itself. If after conviction the convict and the informant found it fit to settle the disputes amongst themselves and the offences involved in the criminal proceedings were not serious in nature, such power could be invoked to put an end to the entire dispute. Referring to the decision of the Division Bench in ***Kiran T. Ingale*** (supra) he submitted that the order of conviction passed therein had been challenged by invoking the revisional jurisdiction of this Court and in that context it had been held that till the proceedings were finally decided, the order of conviction did not attain finality. The presumption of innocence of the accused despite conviction by the first Court would continue till the order of conviction attained finality. For said purpose, the learned counsel placed reliance on the decision in ***Padam Singh Vs. State of U. P. (2000) 1 SCC 621.*** The learned counsel then referred to the judgment of the Full Bench of this Court in ***Abasaheb Yadav Honmane*** (supra) to submit that the answers given by the said Full Bench to the effect that inherent powers under Section 482 of the Code were of wide magnitude and ramification and such power could be exercised for quashing criminal proceedings of any kind whether compoundable or non-compoundable on settlement of disputes between the parties. The Full Bench, according to the learned counsel, had also held that the power to compound could be exercised even at the appellate stage. In that view of the matter as the said Full Bench had held so, such power was available under Section 482 of the Code. He referred to reformative theory that was taken note of in ***Shivaji Haribhau Jawanjal*** (supra) to submit that if the accused had realized his guilt and was ready to reform himself settlement in such situation should be encouraged. Refusal to quash criminal proceedings

after conviction despite settlement between the parties would result in the stigma of conviction to continue on record. Referring to the decision in ***Retti Deenabhandu and ors. Vs. State of Andhra Pradesh, AIR 1977 SC 1335,*** he submitted that an order of conviction carries with it a stigma further resulting in consequences flowing from such conviction. Thus it was all the more necessary to set aside the order of conviction especially when the parties had settled their disputes. He also placed reliance on the observations in paragraph 28 of the decision in ***Narinder Singh*** (supra) and the decisions in ***Arvind Barsaul (Dr.) and ors. Vs. State of M.P. and anr. (2008) 5 SCC 794, Monica Kumar (Dr.) and anr. Vs. State of U.P. (2008) 8 SCC 781*** as well as the judgment of the Delhi High Court in ***R.S.Arora Vs. State of NCT Delhi 1995 AIHC 2769.*** It was thus his submission that considering the wide scope of powers under Section 482 of the Code coupled with the reformative theory, there was no limitation to exercise such power and quash criminal proceedings even after conviction of the accused if there was a settlement arrived at between the parties. The only exception to this were offences of a serious nature and crimes against the society.

5. Learned Advocates at the bar sought permission to address the Court on the questions as framed. On being so permitted, Shri Anil S. Mardikar, learned Senior Advocate, at the outset submitted that the law as laid down by the earlier Full Bench in ***Abasaheb Yadav Honmane*** (supra) was clear enough to answer Question (A) as framed by the Division Bench. It having been held that the inherent power under Section 482 of the Code for quashing criminal proceedings being of a wide magnitude for being exercised with the object of securing the ends of justice, there was no limitation on such powers for being exercised only prior to conviction of an accused. There was no reason

whatsoever to restrict exercise of powers under Section 482 of the Code only to cases where an order of conviction was not passed. If requirements of Section 482 of the Code were satisfied in the sense that it was necessary to give effect to any order under the Code or to prevent an abuse of the process of any Court or to secure the ends of justice, the proceedings could be quashed notwithstanding the fact that the order of conviction was already passed against the accused. Since the power under Section 482 of the Code was not controlled by Section 320 of the Code, such power could be exercised at any stage of the criminal proceedings. Criminal proceedings would commence from the lodging of the first information report and would continue till the order of conviction, if passed, attained finality. Merely because the order of conviction was pending adjudication at the appellate or revisional stage the same could not be a ground for refusing to exercise powers under Section 482 of the Code to quash the criminal proceedings especially when the parties to the dispute had arrived at a settlement. The exception when such power could not be exercised was already laid down by the Hon'ble Supreme Court in ***Gian Singh*** and ***Narinder Singh*** (supra). Placing reliance on the decision in ***Mallikarjun Kodagali (Dead) through LRs vs. State of Karnataka, (2019) 2 SCC 752,*** it was urged that the larger object to seek a settlement and encourage the victims of offences to come forward in that regard was emphasised therein. He also referred to the decision of the Division Bench in ***Kiran T. Ingale*** (supra) to indicate that the power to quash criminal proceedings even after conviction was recognized by the Court. The learned Senior Advocate sought to invoke principle of "stare decisis" by urging that since the decision of the Division Bench in ***Kiran T.Ingale*** (supra) this Court had been consistently entertaining and quashing proceedings under

Section 482 of the Code when the parties arrived at a settlement notwithstanding the fact that the trial had resulted in an order of conviction. In any event when the High Court was the appellate Court it could invoke its jurisdiction under Section 482 of the Code and such powers were in addition to powers available under Section 386 of the Code. There was no limitation to the exercise of inherent powers of the High Court. Reference was made to the decision in ***Bitan Sengupta and anr Vs. State of West Bengal and anr. (2018) 18 SCC 366*** and it was submitted that considering the wide amplitude of the powers under Section 482 of the Code, the same could be exercised for quashing the criminal proceedings post-conviction when the convict and the victim had arrived at a settlement.

6. Shri Sahil Dewani, learned counsel submitted that there was no embargo on the exercise of jurisdiction under Section 482 of the Code even after conviction notwithstanding the fact that an appellate remedy was available. Such power could be exercised to meet the ends of justice where the parties had settled their disputes except in serious offences against the society. Referring to the decision in ***Bitan Sengupta*** (supra), it was submitted that if settlement between the parties is brought to the notice of the Court in an appeal challenging conviction, such settlement should be accepted and relief should be granted to the parties. He further submitted that even if an alternate remedy by way of an appeal/revision was available to challenge an order of conviction, the same cannot be a ground to refuse to entertain the proceedings under Section 482 of the Code for quashing of criminal proceedings. For said purpose he referred to the decisions in ***Vijay and anr. Vs. State of Maharashtra (2017) 13 SCC 317, Prabhu Chawla Vs. State of Rajasthan and ors. (2016) 16 SCC 30*** and

*Punjab State Warehousing Corporation Faridkot Vs. Durgaji Traders and ors. (2011) 14 SCC 615.* He also brought to the notice of the Court the decisions in *State of M.P. Vs. Dhruv Gurjar and ors. (2019) 5 SCC 570, Shiji @ Pappu and ors. Vs. Radhika and anr. (2011) 10 SCC 705, Saloni Rupam Bhartiya Vs Rupan Pralhad Bhartiya AIR Online 2015 SC 50* and *State of Rajasthan Vs. Shambhu Kewat and ors. (2014) 4 SCC 149.*

7. Shri P. R. Agrawal, learned counsel submitted that after the Hon'ble Supreme Court answered the reference in *Gian Singh* (supra), the proceedings in Criminal Appeal No.2052/2013 were decided by the Hon'ble Supreme Court by its judgment dated 06.12.2013. The order passed by the High Court in those proceedings refusing to quash the proceedings under Section 482 of the Code was set aside and the proceedings were remanded to the High Court for a fresh adjudication in the light of the law laid down therein. In that case also the parties had entered into a compromise after the accused was convicted for the offence punishable under Section 420 and 120-B of the Penal Code. He then submitted that the Division Bench of the Punjab and Haryana High Court in *Sube Singh and another Vs. State of Haryana and another 2014 (2) Crimes 299* had considered the question on a reference made to it as to whether criminal proceedings could be quashed by the High Court in exercise of power under Section 482 of the Code even when the accused was found guilty and convicted by the trial Court. The question was answered by holding that the power under Section 482 of the Code was wide enough to quash proceedings in relation to a non-compoundable offence notwithstanding the bar under Section 320 of the Code and such power could be exercised at any stage of the proceedings. In the

said case, the accused was convicted under Sections 420, 467, 468 read with Section 120 B of the Penal Code. In view of compromise between the parties which was found to be genuine and as the parties were living under the same roof, it was held that it was a fit case to invoke inherent jurisdiction and strike down the proceedings by providing for certain safeguards. Thus, according to the learned counsel power under Section 482 of the Code could be exercised even after conviction of the accused for a non-compoundable offence. He also referred to the decisions of the Punjab and Haryana High Court in ***Dharambir Vs. State of Haryana (2005) 3 RCR (Cri) 426 (FB)*** and ***Kulwinder Singh and others Vs. State of Panjab and another (2007) 3 RCR (Cri) 1052***.

Shri S. V. Sirpurkar, learned counsel referred to the report of the Law Commission on the aspect of compounding of offences and submitted that in view of the recommendations of the Law Commission in its 237th report it was necessary to encourage participation of victims on the aspect of settlement. It was thus clear that if such efforts were brought before the Court the same should be accepted in exercise of power under Section 482 of the Code. He also referred to the decision in ***Prabhu Chawla*** (supra) on the question of availability of an alternate remedy and the same not being a hurdle in the exercise of power under Section 482 of the Code.

8. Shri S.Y.Deopujari, learned Public Prosecutor for the State of Maharashtra submitted that after conviction of an accused for commission of a non-compoundable offence if the parties arrive at any settlement the entire order of conviction was not liable to be set aside. At the most the sentence imposed on such accused could be suitably modified if the compromise was accepted. While exercising such power under Section 482 of the Code in view of

settlement of disputes between the convict and the victim, the impact of acceptance of such settlement on the society as well as the victim should not be ignored. In view of the order of conviction passed after a full-fledged trial the accused should not be acquitted by virtue of settlement post-conviction. This would frustrate the entire exercise conducted during the trial and would also affect the deterrent theory which was necessary for maintaining a law abiding society. It would also encourage the accused to somehow seek to settle the dispute after the order of conviction and there was a possibility that the victim/complainant could be pressurized in doing so. Where the prosecution had ended in an order of conviction, the facts as well as the evidence on record would require examination before accepting a request of compromise. Such exercise would not be possible while exercising jurisdiction under Section 482 of the Code. On the other hand in exercise of appellate/revisional jurisdiction the Court could undertake such exercise and if it was convinced about the genuineness of the compromise, the sentence could be suitably modified. He thus submitted that the scope and power available under Section 482 of the Code was limited especially after an order of conviction for a non-compoundable offence. He also submitted that the decision in ***B.S.Joshi Vs. State of Haryana (2003) 4 SCC 675*** related only to matrimonial cases and minor private disputes. The scope to quash criminal proceedings could not be enhanced especially after an order of conviction was passed by the trial Court.

9. Shri S.P.Bhandarkar, learned counsel submitted that the jurisdiction under Section 482 of the Code ought to be exercised only to give effect to any order passed under the Code or to prevent the abuse of the process of law or to secure the ends of justice. Such powers were in addition to powers available

under the Code and these powers being procedural in nature, other provisions of the Code could not be ignored or nullified while exercising jurisdiction under Section 482 of the Code. If relief could be granted under other provisions of the Code then no substantive relief could be granted under Section 482 of the Code. He sought to equate the provisions of Section 482 of the Code with the provisions of Section 151 of the Code of Civil Procedure, 1908. In that regard, he referred to the decisions in ***K.K.Velusamy Vs. N.Palanisamy, (2011) 11 SCC 275*** and ***State of U.P. and ors. Vs. Roshan Singh (Dead) by LRs and ors. (2008) 2 SCC 488***. He then referred to the provisions of Section 320 of the Code. According to him, compromise, if any, should not be lightly accepted and the material aspects such as the timing of compromise especially after conviction, chances taken by the accused during the trial and such compromise being entered into thereafter, the possibility of buying out the victim have to be kept in mind. He also referred to the theory of reformation vis-a-vis the theory of deterrence. There was no bar for the appellate Court while considering an appeal challenging conviction to take into consideration the aspect of compromise. He also referred to the provisions of Section 265-A and 265-B of the Code. He then submitted that where the prosecution was launched by the State, it should also be a party to the compromise entered into between the convicted accused and the victim. If such compromise was easily accepted and the conviction was set aside on that count, the same would have adverse impact on the law abiding society and the theory of deterrence would also be affected. He placed reliance on the decisions in ***State of Madhya Pradesh Vs. Laxmi Narayan and ors. (2019) 5 SCC 688, Ishwar Singh Vs. State of Madhya Pradesh (2008) 15 SCC 667, Arun Shankar Shukla Vs. State of Uttar Pradesh and ors.***

*(1999) 6 SCC 146* and *Central Bureau of Investigation Vs. A. Ravinshankar Prasad and ors. (2009) 6 SCC 351* to substantiate his contentions.

10. Shri Yash Venkatraman, learned counsel submitted that the decisions in the cases of *Gian Singh* and *Narinder Singh* (supra) do not deal with the situation arising out of the prayer for quashing criminal proceedings after conviction for a non-compoundable offence. The ratio of those decisions was in the context of settlement of disputes before conviction. On the other hand by referring to the decision in *Manohar Singh Vs. State of Madhya Pradesh (2014) 13 SCC 75*, it was submitted that though the conviction of the accused therein was under Section 498-A of the Penal Code and the dispute was of a private nature, the order of conviction was not quashed but the same was maintained and the sentence was reduced in view of the settlement of the disputes. He then referred to the provisions of Section 75 of the Penal Code to urge that in certain situations if there was an order of previous conviction then enhanced punishment was liable to be imposed on conviction for a subsequent offence. If compromise after conviction for a non-compoundable offence is accepted and the conviction is set aside, the object behind enacting Section 75 of the Penal Code which seeks to curb commission of another offence subsequent to the earlier conviction would be frustrated. This was all the more reason that even if the disputes were settled, the conviction ought not to be set aside and it was only the sentence which ought to be modified. He also referred to the provisions of Sections 354-C and 354-D of the Penal Code and submitted that compromise if entered into after conviction could at the most result in reducing the sentence imposed by the trial Court.

Ms. Nidhi Dayani, learned counsel submitted that compromise if any

can be looked into after conviction when the Court seeks to exercise appellate or revisional jurisdiction while considering the challenge to the order of conviction. Referring to the decision of the Full Bench in ***Abasaheb Yadav Honmane*** (supra) it was submitted that while exercising power under Section 482 of the Code, the decision of the trial Court could not be substituted by this Court under the garb of exercising inherent jurisdiction. She also referred to the provisions of Sections 374 and 375 of the Code to urge that when a remedy for challenging an order of conviction is provided jurisdiction under Section 482 of the Code should not be exercised.

Shri Vivek Bharadwaj, learned counsel referred to the judgment in ***Gian Singh*** (supra) to urge that the said decision deals with pre-conviction cases and the analogy applied therein could not be extended to cases after conviction of the accused. Similarly the judgment in ***Narinder Singh*** (supra) also dealt with the situation relating to exercise of power under Section 482 of the Code prior to conviction. If the proceedings under Section 482 of the Code are entertained despite availability of appellate remedy, the same would result in transgressing appellate jurisdiction conferred on the Court.

11. We have heard the illuminative submissions made by the learned counsel on the questions as framed and we have given our thoughtful consideration to the same.

> ***Question (A) :*** *In a prosecution which has culminated in a conviction, whether the power u/s 482 Cr.P.C. ought to be exercised for quashing the prosecution/conviction altogether, (instead of maintaining it and considering the issue of modification of the sentence) upon a settlement between the convict and the victim/complainant ?*

While answering Question (A) which pertains to exercise of power

under Section 482 of the Code subsequent to conviction of an accused at which stage there occurs a settlement between the convict and the informant, it would be necessary to first examine the nature and scope of powers conferred under Section 482 of the Code.

**Nature and scope of powers under Section 482 of the Code.**

12. Section 482 of the Code recognizes the inherent power of the High Court to exercise jurisdiction and make such orders that are found necessary to give effect to any order under the Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. After recognising such inherent powers the said provision stipulates that nothing in the Code shall be deemed to limit or affect the aforesaid powers of the High Court. The provisions of Section 482, its scope, width and amplitude had been considered in various decisions of the Hon'ble Supreme Court and reference could be made to some recent precedents. In ***State of Punjab Vs. Davinder Pal Singh Bhullar and ors. (2011) 14 SCC 770*** it was held that the expressions "abuse of the process of law" and "ends of justice" are aspects that have to be dealt with in accordance with law which includes procedural law and not otherwise. In ***Surya Baksh Singh Vs. State of Uttar Pradesh (2014) 14 SCC 222***, it was held that the expression "ends of justice" would mean not only the rights of a convict but also the rights of victims of the crime and the law abiding section of the society. Similarity was found in the powers conferred under Section 482 of the Code with the provisions of Section 151 of the Code of Civil Procedure, 1908. It is also settled that availability of an alternate remedy by itself cannot be a reason to refuse to exercise jurisdiction under Section 482 of the Code. This position has been clarified in ***Prabhu Chawla*** and ***Vijay and anr.*** (supra). The limitation on the

Court while seeking to exercise inherent powers is one of self-restraint and nothing more.

13. The Hon'ble Supreme Court in catena of cases has used the expression "rarest of rare case" while describing the scope of exercise of power under Section 482 of the Code. Reference in that regard can be made to the decisions in ***Pratibha Vs. Rameshwari Devi and ors. (2007) 12 SCC 369, Sunita Jain Vs. Pawan Kumar Jain and ors. (2008) 2 SCC 705*** and ***Som Mittal Vs. Government of Karnataka (2008) 3 SCC 574.*** By requiring jurisdiction to be exercised in the rarest of rare case the approach to be adopted by the High Court under Section 482 of the Code has been indicated. In this context, we may refer to the judgment of the Division Bench of this Court in ***Istiyak Khan Iqbal Khan Vs. State of Maharashtra , 2014 ALL MR (Cri) 3045*** that was referred to by the learned counsel for the applicants. The applicant therein along with twelve others were prosecuted for the offence punishable under Section 3(1)(ii) and Section 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short, the Act of 1999). Eight accused thereafter underwent trial. After the charges were framed the applicant pleaded guilty. At the conclusion of the trial the other seven accused came to be acquitted by the trial Court after holding that the prosecution had failed to bring on record sufficient evidence to establish that the provisions of the Act of 1999 had been attracted. In short the sole applicant came to be convicted under provisions of the Act of 1999. The applicant invoked extra ordinary jurisdiction of this Court under Section 482 of the Code praying that his conviction be set aside in the light of the fact that he alone had been convicted under the Act of 1999. Shri B.R.Gavai, J (as His Lordship then was) speaking for the Bench considered the question as to

whether the conviction of the applicant based on the plea of guilt would be sustainable especially when the prosecution had failed to bring evidence on record to establish commission of offence under the Act of 1999. It was held that as the prosecution had failed to establish existence of an organized crime syndicate, a single person could not be said to have committed offence under the Act of 1999. In this backdrop, the Court proceeded to consider whether the said case was an appropriate case for invoking jurisdiction under Section 482 of the Code. It was held that when all the other accused had been acquitted on the ground that the prosecution had failed to prove the case under the provisions of the Act of 1999, the sole applicant could not be convicted on the mistaken plea of guilt. Describing the case to be a "rarest of rare case", the Court proceeded to exercise powers under Section 482 of the Code for setting aside conviction of the applicant. It was also noted that the applicant had undergone sentence of more than five years and exercise of jurisdiction was necessary otherwise to secure the ends of justice. The facts of this case clearly highlight the use of the expression "rarest of rare case" wherein the order of conviction was set aside in exercise of power under Section 482 of the Code inasmuch as a jurisdictional question of conviction of sole accused for an offence involving organized crime had arisen.

**Parameters laid down in Gian Singh and Narinder Singh by the Honourable Supreme Court :**

14. In ***Gian Singh*** (supra) the question as regards permissibility of indirectly permitting compounding of non-compoundable offences was referred to a larger Bench of the Hon'ble Supreme Court especially in the light of the decisions in ***B.S.Joshi*** *(supra)*, ***Manoj Sharma vs State (2008) 16 SCC 1*** and ***Nikhil Merchant vs Central Board of Investigation (2008) 9 SCC 677***. In

paragraph 61 of the judgment in ***Gian Singh*** (supra), it was observed as under :

> "*61. .....In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominantingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding ".*

It is to be noted that in the aforesaid paragraph the Hon'ble Supreme Court has observed that the High Court may quash criminal proceedings if in its view because of the compromise between the offender and the victim the possibility of conviction would be remote and bleak. Continuation of the

criminal case would cause great oppression and prejudice as well as extreme injustice. It can be seen that the Court principally considered the question with regard to situations arising prior to conviction.

The decision in ***Gian Singh*** (supra) and its ratio was subsequently considered in ***Gopakumar B. Nair Vs. Central Bureau of Investigation and anr. (2014) 5 SCC 800*** by the Bench of three learned Judges. It was observed that what was referred to the larger Bench while deciding ***Gian Singh*** (supra) was the question whether quashing of a non-compoundable offence on the basis of compromise/settlement of the dispute between the parties would be permissible and would not amount to overreaching the provisions of Section 320 of the Code. The merits of the decision in ***Nikhil Merchant*** (supra) had not been referred to. It was thereafter explained that what followed from the decision in ***Gian Singh*** (supra) was that though quashing a non-compoundable offence under Section 482 of the Code following a settlement between the parties would not amount to circumvention of the provisions of Section 320 of the Code, the exercise of power under Section 482 of the Code would always depend on the facts of each case. This was held to be the correct ratio of the decision in ***Gian Singh*** (supra).

15. In ***Narinder Singh*** (supra), proceedings under Section 482 of the Code were filed seeking quashing of the first information report that was registered under Sections 307, 323, 324 read with Section 34 of the Penal Code in view of compromise between the accused and the complainant. The compromise was not accepted by the High Court and that order was put to challenge before the Hon'ble Supreme Court. Reference was made to the decision of the larger Bench in ***Gian Singh*** (supra) and it was observed that mere

settlement between the parties should not be a ground to quash the proceedings by the High Court as settlement of a heinous crime cannot have the imprimatur of the Court in the light of the fact that offence under Section 307 of the Penal Code was alleged to have been committed. It was a crime against the society and it was thus the duty of the State to punish the offender. Even in case of settlement between the offender and the victim, their will would not prevail as in such cases the matter was in public domain. The Court also referred to the timing of the settlement which would play a crucial role in the matter. The Court noted in paragraph 28 as under :-

> "*28. We have found that in certain cases, the High Courts have accepted the compromise between the parties when the matter in appeal was pending before the High Court against the conviction recorded by the trial court. Obviously, such cases are those where the accused persons have been found guilty by the trial court, which means the serious charge of Section 307 IPC has been proved beyond reasonable doubt at the level of the trial court. There would not be any question of accepting compromise and acquitting the accused persons simply because the private parties have buried the hatchet.*

In paragraph 29.7 it was observed that in cases where the conviction was already recorded by the trial Court and the matter was at the appellate stage, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who had been convicted by the trial Court. The Court thereafter proceeded to lay down guidelines for the exercise of power under Section 482 of the Code. While doing so the Court also referred to the requirement of examining the possibility of conviction being remote and bleak.

In the aforesaid decision the Court considered the prayer for quashing of the first information report in the light of compromise between the parties when the matter was before the trial Court. However with regard to the

matters where conviction was already recorded after which the parties arrived at a settlement, it has been observed in clear terms that such compromise by itself would not be sufficient to acquit the accused who had been convicted by the trial Court.

16. The decision in ***Narinder Singh*** (supra) was considered by another bench of three learned Judges in ***State of Madhya Pradesh Vs. Laxminarayan and others (2019) 5 SCC 688*** on a reference made to it in the light of conflict in the decisions in ***State of Rajasthan vs. Shambhu Kewat (2014) 4 SCC 149*** and ***Narinder Singh*** (supra). Therein the High Court in exercise of powers under Section 482 of the Code had quashed the first information report registered under Sections 307 and 34 of the Penal Code solely on the basis of compromise between the complainant and the accused. After referring to the decisions in ***Gian Singh*** and ***Narinder Singh*** (supra) it was held that offences under Section 307 of the Penal Code and under the Arms Act, 1959 would fall in the category of heinous and serious offences which were required to be treated as crime against the society and not against an individual alone. Criminal proceedings for such offences that had a serious impact on the society could not be quashed in exercise of powers under Section 482 of the Code on the ground that the parties had resolved their entire dispute amongst themselves. It further observed that mere mention of Section 307 of the Penal Code in the first information report or in the charge as framed should not be the basis for the High Court to rest its decision. It would be open for the High Court to examine whether incorporation of Section 307 of the Penal Code was only for the sake of it or the prosecution had collected sufficient evidence in that regard. Such exercise however would be permissible only after the evidence was collected

after investigation and the charge-sheet was filed/charge was framed and/or during the trial. Such exercise would not be permissible when the matter was still under investigation. It was held that the ultimate conclusions in paras 29.6 and 29.7 of the decision in ***Narinder Singh*** (supra) had to be read harmoniously as a whole. With regard to non-compoundable offences which were private in nature and did not have a serious impact on society it was observed in paragraph 15.5 as under :

> *"15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offencer, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc."*

These observations clearly indicate that even while exercising power of quashing criminal proceedings in respect of non-compoundable offences which are private in nature and do not have serious impact on society the High Court is expected to consider the antecedents of the accused, his conduct as to whether he was absconding and reason for the same and how he managed with the complainant to enter into a compromise. These observations are an indicator of the parameters that would have to be applied even with regard to quashing of non-compoundable offences which are private in nature and do not have a serious impact on society.

## Section 320 of the Code.

17. Section 320 (1) of the Code specifies offences that may be compounded by the persons mentioned in the third column of the table

appended thereto. Section 320 (2) specifies offences that may be compounded with the permission of the Court before which any prosecution for such offence is pending. As per Section 320 (5) when the accused has been committed for trial or has been convicted and an appeal is pending, the offence cannot be compounded without the leave of the concerned Court. Under Section 320 (6) the High Court or the Court of Sessions in exercise of revisonal power can allow any person to compound any offence which he is competent to do so under Section 320. Section 320 (9) clearly stipulates that no offence shall be compounded except as provided by the said Section. By now it is well settled that the power of compounding an offence has to be exercised strictly in the manner provided by Section 320 of the Code. It is only those offences stipulated by Section 320 (1) and (2) of the Code that could be permitted to be compounded. The power to compound under Section 320 is different from the aspect of quashing of proceedings as held in ***Shambhu Kewat*** (supra). Similarly, a non-compoundable offence cannot be permitted to be compounded by taking recourse to Section 320 of the Code as held in ***Ram Lal and ors. Vs. State of Jammu and Kashmir (1999) 2 SCC 213*** and ***Ishwar Singh Vs. State of Madhya Pradesh*** **(2008) 15 SCC 667.** In ***B.S.Joshi*** (supra) it has been held that the provisions of Section 320 of the Code do not act as a bar in the exercise of power under Section 482 of the Code.

The history of compounding has been referred to in ***JIK Industries Limited and others Vs. Amarlal V.Jumani and anr. (2012) 3 SCC 255*** and it has been held that the provisions contained in Section 320 of the Code and its various sub sections was in the nature of a code in itself relating to compounding of an offence. It was observed that in common law compounding

was considered a misdemeanor. When the Criminal Procedure Code, 1861 was enacted it was silent about compounding of offences. It was introduced in the Code of 1872 in the form of Section 188. In the subsequent Code of 1898 Section 345 specified offences which were compoundable. It is only after repeal of that Code and enactment of the present Code of 1973, that Section 320 was introduced containing comprehensive provisions for compounding.

**Whether compromise by itself is sufficient to set aside conviction in a non-compoundable offence :**

18. On conviction of an accused by the trial Court the remedy available to challenge the order of conviction has been provided in Chapter-XXIX of the Code and especially by Section 374 therein. The powers of the appellate Court are prescribed by Section 386 of the Code while revisional powers are indicated by Section 401 of the Code in Chapter-XXX. Once an order of conviction is recorded by the trial Court on the basis of material presented by the prosecution/complainant, it is for the appellate Court to either reverse such finding or alter it or in a given case even enhance the sentence. As held in ***Jeetu Vs. State of Chhattisgarh (2013) 11 SCC 489*** it is the duty of the appellate Court to arrive at its own independent conclusion after examining the material on record. This exercise has however to be conducted after considering the material on record. 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. There are overwhelming precedents to the effect that if any compromise is entered into between the convict and the victim/complainant

post-conviction for a non-compoundable offence, such compromise by itself cannot be a reason to set aside the order of conviction. 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 mitigating factor to be taken into consideration while awarding appropriate sentence.

One of the earliest decisions in which the effect of compromise after conviction for a non-compoundable offence was considered was in ***Ram Pujan and ors. Vs. State of U.P. AIR 1973 SC 2418.*** There the accused were convicted by the Sessions Court under Section 326 read with Sections 149 and 323 of the Penal Code. The High Court acquitted some of the accused and conviction of the others was altered to that under Section 326 read with Section 34 and Section 323 of the Penal Code. The Hon'ble Supreme Court noticed that when the appeal was pending before the High Court an application for compromise on behalf of the injured prosecution witnesses was filed. It was stated that the parties had amicably settled their dispute and they wanted to live in peace. The settlement was got verified from the trial Court but the High Court did not grant permission to compound the offence under Section 326 of the Penal Code as it was non-compoundable. However the sentence for the said offence was reduced from four years to two years. It was observed by the Hon'ble Supreme Court that the major offence for which the appellants had been convicted was non-compoundable. However the fact of compromise could be taken into account in

determining the quantum of sentence. Accordingly, while maintaining the order of conviction, the sentence was reduced to the period already undergone by the appellants. The course followed in this decision rendered by three learned Judges has thereafter been followed notably also by another bench of three learned Judges in ***Surendra Nath Mohanty and another Vs. State of Orissa (1999) 5 SCC 238***. These decisions indicate that the effect of compromise after conviction for a non-compoundable offence has to be taken into consideration only for the purpose of reducing the sentence and not for setting aside the conviction on that count.

20. The course consistently followed by the Hon'ble Supreme Court while considering the challenge to the order of conviction and the effect of settlement thereafter is to maintain the conviction as recorded but to reduce the sentence imposed for commission of such non-compoundable offence. Reference can be usefully made to some amongst numerous decisions wherein such course was followed :

1. Salim and others Vs. State of M.P. 1995 Supp (4) SCC 631.
2. Murugesan and others Vs. Ganpathy Velar (2001) 10 SCC 504.
3. Ramchandra Singh and Ors Vs. State of Bihar and ors. (2003)10 SCC 234
4. Badrilal Vs. State of M.P. (2005) 7 SCC 55.
5. Jetha Ram and ors. Vs. State of Rajasthan (2006) 9 SCC 255.
6. Sanjit Datta Vs. State of Tripura and anr. (2006) 13 SCC 294.
7. Badal Deb and anr. Vs.State of Assam (2006) 10 SCC 540.
8. Ishwar Singh Vs. State of Madhya Pradesh, (2008) 15 SCC 667.
9. Puttaswamy Vs. State of Karnataka and ors. (2009) 1 SCC 711.
10. Amar Nath Shukla Vs. State of Uttaranchal (2009) 9 SCC 390.
11. K.K.Sreedharan and ors. Vs. State of Kerala and anr. (2011) 15 SCC 139.
12. Rajendra Harakchand Bhandari and ors. Vs. State of Maharashtra & ors. AIR 2011 SC 1821.
13. Gulab Das and ors. Vs. State of M.P. AIR 2012 SC 888.
14. Mukesh Kumar and ors. Vs. State of Rajasthan (2013) 11 SCC 511.

15. Manohar Singh Vs. State of Madhya Pradesh, (2014) 13 SCC 75.
16. Shankar and ors. Vs. The State Maharashtra and ors. (2019) 5 SCC 166.

The legal position is thus clear that compromise post-conviction for a non-compoundable offence *ipso facto* cannot result in acquittal of the convict and compromise is one amongst various aspects to be considered while imposing appropriate sentence when the conviction is liable to be maintained on examining the merits of the case.

21. The observations of the Hon'ble Supreme Court in ***Hasi Mohan Barman*** **vs.** ***State of Assam and anr. (2008) 1 SCC 184*** are also relevant for the purposes of considering the effect of compromise post-conviction. The accused therein were convicted for the offence punishable under Section 313 of the Penal Code read with Section 34 thereof. That conviction was maintained by the High Court but by reducing the sentence imposed by the Sessions Court. During pendency of the proceedings, the complainant married accused no.1 and she thereafter filed an affidavit stating that in view of such compromise she wanted to withdraw the criminal case pending against her husband and the other accused. The Hon'ble Supreme Court which was seized of the appeal directed the learned Sessions Judge to verify the contents of the affidavit sworn by the complainant. On such verification it was reported that the contents thereof were correct. While considering the effect of such compromise during the pendency of the appeal it was observed by the Hon'ble Supreme Court that the consent given by the wife/complainant or the affidavit filed by her could not be utilized for the purpose of recording a finding of acquittal in favour of the accused. The conviction of the appellant was maintained but taking note of the aforesaid settlement the sentence was reduced to the period already undergone by the

said accused. It is clear from this decision that despite compromise and the consent given by the complainant the same was not utilized for the purpose of acquitting the accused.

Reference can also be made to the decision in ***C.Muniappan Vs. State of Tamil Nadu (2009) 13 SCC 790*** where the accused were tried and convicted under Section 302 of the Penal Code. During the pendency of the appeal a compromise entered into between the family of the victim and the accused was sought to be relied upon. The Hon'ble Supreme Court observed that if the parties had settled their disputes they could live in peace but that by itself cannot be a ground to pass a judgment of acquittal.

22. In yet another recent decision in ***State of Madhya Pradesh Vs. Dhruv Gurjar and anr. (2019) 5 SCC 570,*** the first information report was registered under Sections 307, 294 and 34 of the Penal Code. When investigation was pending the accused filed an application under Section 482 of the Code seeking quashing of the criminal proceedings on the ground that the parties had arrived at a compromise. The High Court proceeded to quash the criminal proceedings in view of such settlement which order was challenged before the Hon'ble Supreme Court. It was held that while quashing the proceedings the High Court failed to consider the fact that the offences alleged were non-compoundable as well as serious. They also had social impact. After referring to the decisions in ***Gian Singh, Narinder Singh*** *and* ***Parbatbhai Aahir*** (supra), it was held that it was not in every case where the complainant had entered into the compromise with the accused that the prosecution would not end in conviction. Such observation would be presumptive and in a given case the prosecution would be able to prove the guilt by leading cogent evidence and examining other witnesses

especially when the dispute was not a commercial transaction and/or of civil nature and/or was not a private wrong. A distinction was again made between offences not against the society not having social impact and family/matrimonial disputes. The order passed by the High Court accordingly was set aside. This decision thus indicates that quashing of first information report registered under Section 307 read with Section 34 of the Penal Code even prior to conviction was not permitted on the ground of settlement.

Reference however would have to be made to the decision in ***Bitan Sengupta and anr.*** (supra) wherein the accused was convicted under Section 498-A of the Penal Code. An appeal filed before the Sessions Court came to be dismissed. However, during the pendency of the appeal, the parties arrived at a compromise and on that basis mutual divorce under Section 28 of the Special Marriage Act, 1954 came to be granted. The order of the Sessions Court was challenged by filing revision application before the High Court but the same was however dismissed. Before the Hon'ble Supreme Court, it was pointed out that the parties had settled the matter and that grievances between them did not survive. In these circumstances and by following the spirit of the law laid down in ***B.S.Joshi*** (supra), it was observed that the High Court ought to have accepted the settlement and compounded the offences. The appeal was accordingly allowed and the order of conviction was set aside. As noted above, the conviction was under Section 498-A of the Penal Code and it was a matrimonial dispute between the parties.

23. Basing an acquittal solely on the ground that the complainant/victim and the accused have settled the dispute post-conviction would also result in infraction of Section 386 of the Code. In ***Amar Singh Vs. Balwinder and ors.***

*(2003) 2 SCC 518* the Hon'ble Supreme Court referred to the scope of powers of the appellate Court especially under Section 386 of the Code. It was held that it was mandatory for the appellate Court to peruse the record which would necessarily mean the statement of witnesses and in a given case the testimony of eye witnesses. Perusal of the record has therefore been found to be mandatory more so when the judgment of conviction has to be reversed by the appellate Court. Moreover, the convicted accused has an opportunity to have the stigma of conviction erased in the appeal.

The law of the land is therefore clear that compromise entered into after conviction of the accused for a non-compoundable offence cannot by itself result in acquittal. Such compromise can be taken into consideration while imposing appropriate sentence on the accused. Thus if an appeal challenging conviction for a non-compoundable offence cannot be allowed only because the parties have compromised amongst themselves and the order of conviction cannot be set aside on that count, such result cannot be obtained in proceedings under Section 482 of the Code on similar grounds. It is well settled that what cannot be achieved directly cannot be permitted to be achieved indirectly. Moreover, we are here concerned with exercise of discretionary power under Section 482 of the Code and surely discretion cannot be exercised to attain such result which is impermissible to be granted in a statutory appeal/revision.

**Expression "criminal proceedings" :**

24. The expression "criminal proceedings" has been used by the Hon'ble Supreme Court in ***Gian Singh*** and ***Narinder Singh*** (supra). There was some debate as to the true import of this expression namely, whether the same should be restricted to proceedings before the trial Court prior to conviction or it would

extend to the entire proceedings till they attained finality. It is however not necessary to labour much on this aspect especially in the light of the judgment of the Constitution Bench of the Hon'ble Supreme Court in ***Narayan Row and ors. Vs. Ishwarlal Bhagwandas and ors. AIR 1965 SC 1818.*** While examining the expression "civil proceedings" within the meaning of Article 133(1) (c) of the Constitution of India, it was observed that while the expression "civil proceedings" covers all proceedings in which a party asserts the existence of a civil right conferred by civil law or by statute and claims relief for breach thereof, a criminal proceeding on the other hand is ordinarily one which if carried to its conclusion may result in imposition of sentences such as death, imprisonment, fine or confiscation of property. It is thus clear that what is contemplated is proceedings "if carried to its conclusion". This therefore clearly indicates that criminal proceedings would not be limited to proceedings before the trial Court but would include the entire proceedings till its final culmination.

**Law laid down in Kiran T. Ingale and Abasaheb Yadav Honmane :**

25. It would be necessary to refer to the decision of the Division Bench in ***Kiran T. Ingale*** (supra) especially in view of the fact that while answering the reference made to the Division Bench, it was held therein that even in cases arising after conviction inherent powers could be exercised and criminal proceedings could be quashed. The facts leading to the said reference were that the petitioner therein and the first respondent were husband and wife. In proceedings initiated under Section 498-A of the Penal Code the petitioner came to be convicted. In appeal the dispute between the parties came to be settled and they separated by obtaining divorce by mutual consent. The first respondent

agreed not to press for the petitioner's conviction. The appellate Court maintained the order of conviction and gave benefit of the provisions of the Probation of Offenders Act, 1958 to the petitioner. The petitioner preferred a revision application challenging the order of conviction. The learned Single Judge after observing that the decision of the Hon'ble Supreme Court in ***B.S.Joshi*** (supra) was not an authority to hold that offence under Section 498-A of the Penal Code was a compoundable offence, referred the matter to the Division Bench. The Division Bench while answering the second question referred to it as to whether it was open for the High Court to quash the criminal proceedings in exercise of inherent powers in a case which had ended with an order of conviction after trial held that conviction by the trial Court is not the end of the matter and the appeal therefrom is a continuation of the proceedings. Even if a revision application is filed and the conviction is maintained, altered or reduced then the High Court in revision has the power to pass an effective order in accordance with the judgment of the Hon'ble Supreme Court in ***B.S.Joshi*** (supra). When an appeal or revision application is filed against an order of conviction, the same does not attain finality and all issues are open before the High Court. The Division Bench held that even in cases arising after conviction inherent powers could be exercised and criminal proceedings could be quashed. It further held that the decision in ***B.S.Joshi*** (supra) gave power to the High Court to permit compounding of matrimonial offences and the High Court also had the power to quash criminal proceedings or the first information report or complaint. The reference was answered in the aforesaid terms.

26. It is to be noted that the reference in ***Kiran T. Ingale*** (supra) principally arose pursuant to a challenge to the order of conviction under

Section 498-A of the Penal Code and the effect of settlement thereafter. Relying upon the decision in ***B.S.Joshi*** (supra) wherein it was held that when matrimonial disputes which had increased considerably were resolved by either of the parties and thereafter a joint prayer was made for quashing the criminal proceedings filed under Sections 498-A and 406 of the Penal Code, the Division Bench held that such prayer could not be declined on the ground that the offences in question were non-compoundable. Issue no.2 considered by the Division Bench was with regard to exercise of inherent powers for quashing criminal proceedings that had resulted in conviction has to be understood in the aforesaid context. No doubt, in matrimonial cases on a settlement being entered into between the parties post- conviction, the High Court in exercise of jurisdiction under Section 482 of the Code can always pass appropriate orders which could also include an order for quashing the criminal proceedings that have resulted in conviction of a party. The ratio of the decision in ***Kiran T. Ingale*** (supra) has to be understood in the context that inherent powers under Section 482 of the Code can be exercised for quashing criminal proceedings at any stage especially those arising out of matrimonial disputes. It is not the ratio of the said decision that even on conviction for a non-compoundable offence which is of a serious nature or an offence which is against the society at large criminal proceedings can be quashed only on the ground that the parties meaning the accused who has been convicted and the informant/claimant have settled their dispute which could by itself result in an order of acquittal. We therefore clarify that the ratio of the judgment of the Division Bench in ***Kiran T. Ingale*** (supra) is to the aforesaid effect and same should not be read to mean that in criminal proceedings arising out of serious offences or offences against the society such

powers could be invoked under Section 482 of the Code by accepting such settlement and setting aside the order of conviction.

27. In ***Abasabeb Yadav Honmane*** (supra) the Full Bench of this Court considered the scope of inherent powers under Section 482 of the Code so as to permit the compounding of offences other than the offences punishable under Section 498-A of the Penal Code and particularly offences punishable under Sections 306, 307, 328, 376, 406 and 495 of the Penal Code. The law laid down by the Hon'ble Supreme Court in ***B.S.Joshi*** (supra) was sought to be explained by the Full Bench coupled with another question as regards the scope of power to be exercised under Section 482 of the Code being restricted only to the trial stage or if available even at the appellate stage. The Full Bench while answering the aforesaid questions noticed that the power to compound offences and the power to quash criminal proceedings was distinct and different. These powers operate in different spheres. While the power to compound offences was a statutory power granted by Section 320 of the Code, the power to quash a first information report or criminal proceedings under Section 482 of the Code found its source from Judge made law. It was reiterated that the powers under Section 482 of the Code were not limited or affected by the provisions of Section 320 of the Code and the offences that were not compoundable under Section 320 of the Code could not be permitted to be compounded in exercise of powers under Section 482 of the Code. While emphasizing the wide magnitude and ramification of the powers under Section 482 of the Code, it was stated that such powers had to be exercised sparingly and with caution. The purpose of passing any order in its inherent jurisdiction ought to be confined to one of the three categories stated in Section 482 of the Code. It was clarified that the

judgment of the Hon'ble Supreme Court in ***B.S.Joshi*** (supra) did not give any power to the High Court to compound non-compoundable offences even if they related to matrimonial offences. The power to compound could be exercised at the trial stage or even at the appellate stage subject to the conditions stipulated by Section 320 of the Code being satisfied.

From the aforesaid judgment of the Full Bench it becomes clear that non-compoundable offences cannot be compounded in exercise of inherent power under Section 482 of the Code. The power of compounding can be exercised at any stage of the criminal proceedings but in accordance with the provisions of Section 320 of the Code. Though it was urged by Shri A.S. Mardikar, learned Senior Advocate that after the decision in ***Abasaheb Yadav Honmane*** (supra) it was not necessary to again refer Question (A) to the larger Bench, we are not in a position to accept that contention. Question (A) specifically pertains to exercise of power under Section 482 of the Code in a situation where the convict and the victim/complainant have arrived at settlement after the conviction of the convict. That question was not considered by the earlier Full Bench and hence the same would have to be answered in the present reference.

28. We may now refer to some decisions of this Court wherein the prayer for quashing of the criminal proceedings was considered in view of settlement of the dispute between the parties post-conviction. In ***Ashwini @ Rani Youraj Akurde vs. State of Maharashtra and another 2016(5) Mh.L.J. (Cri) 398*** the applicant was convicted for the offence punishable under Section 307 of the Penal Code. During pendency of the appeal challenging conviction before the Sessions Court, the applicant and the non-applicant no.2 who was her

husband amicably resolved their matrimonial dispute. The applicant thus approached the High Court under Section 482 of the Code seeking quashing of the criminal proceedings in view of such settlement. Reliance was sought to be placed on the decisions in ***Gian Singh*** and ***Narinder Singh*** (supra). Speaking for the bench, Shri A. S. Oka, J. (as his Lordship then was) observed that in the case of ***Gian Singh*** (supra) the Honourable Supreme Court was dealing with criminal proceedings that were pending before the trial Court in which there was no conviction. Thereafter reference was made to the observations in paragraph 28 of the decision in ***Narinder Singh*** (supra). The observations in both the decisions with regard to bleak possibility of conviction was also taken into consideration. In this backdrop the Court refused to exercise power under Section 482 of the Code for quashing the proceedings by observing that the appellate Court would be required to consider the correctness of the finding of guilt recorded by the trial Court.

Thus, despite settlement of disputes between the accused-wife and the informant-husband the Court refused to quash the criminal proceedings under Section 482 of the Code in view of conviction of the wife under Section 307 of the Penal Code. We find this to be the correct approach and we respectfully concur with the same.

In ***Vasim Jafar Qureshi and others vs. State of Maharashtra and anr. 2014 ALLMR(Cri) 1426*** two cross cases came to be filed resulting in conviction under Section 307 of the Penal Code. The orders of conviction were challenged in separate appeals that were pending. Both parties then filed applications under Section 482 of the Code contending that in view of settlement of their dispute the offences be permitted to be compounded. It was held that inherent

powers could not be exercised to quash the prosecution merely because the parties had chosen to settle their dispute. The Court found the settlement to be motivated and being entered into only for the benefit of each party.

We find that the Court was justified in refusing to quash the proceedings under Section 482 of the Code in view of the fact that conviction was under Section 307 of the Penal Code and the appeals challenging the same were pending. Similarly, in ***Sarjerao Shamrao Dhas vs. State of Maharashtra 2003(2) Mh.L.J. 235*** the applicant was convicted under Section 307 read with Section 34 of the Penal Code. Despite subsequent compromise and the prayer to quash the proceedings the learned Single Judge refused to exercise jurisdiction under Section 482 of the Code for setting aside the conviction. Instead the conviction was maintained and the sentence was reduced to that which had been undergone by the applicant.

**Similar questions considered by the Punjab and Haryana High Court :**

29. Shri P.R.Agrawal, learned Advocate placed on record decisions of the Punjab and Haryana High Court wherein the Court had an occasion to deal with a similar issue with regard to the effect of compromise and exercise of power under Section 482 of the Code to quash a first information report. In ***Dharambir*** (supra) the question with regard to power of the High Court to quash a first information report under Section 482 of the Code in view of compromise between the parties was considered by the Full Bench of that High Court. Two learned Judges were of the view that there was no provision of law conferring power on the High Court to either quash the prosecution or permit compounding of offences which were not declared by the legislature to be compoundable. The only exception was with regard to matrimonial disputes in

view of the decision in ***B.S.Joshi*** (supra). The third learned Judge however held that the power of the High Court to quash a first information report in non-compoundable offences could not be limited to matrimonial disputes alone. There could not be any specific category where the Court could or could not quash a first information report in a non-compoundable offences under Section 482 of the Code.

Thereafter in ***Kulwinder Singh and ors.*** (supra) a larger Bench of five learned Judges proceeded to re-examine the said issue and correctness of the decision of the Full Bench in ***Dharambir*** (supra). It was held that the majority view in ***Dharambir*** (supra) was not correct and that the minority view holding that there could never be any hard and fast category that can be prescribed to enable the Court to exercise its power under Section 482 of the Code was correct and that the only principle was the one which had been incorporated in Section 482 itself meaning to prevent the abuse of the process of any Court or to secure the ends of justice.

Yet again in ***Sube Singh and anr.*** (supra) a Division Bench of the said High Court was called upon to answer the question as to whether criminal proceedings could be quashed under Section 482 of the Code when the accused was found guilty and had been convicted by the trial Court after which appeal was pending before the Sessions Court. The Division Bench held that the magnitude of inherent jurisdiction exercisable by the High Court under Section 482 of the Code so as to prevent the abuse of the process of law or to secure the ends of justice was wide enough to include the power to quash proceedings in relation to not only non-compoundable offences notwithstanding the bar under Section 320 of the Code, but such power could be exercised at any stage of the

proceedings subject to the aspect that there was no express bar and invoking of such power was fully justified on the facts and circumstances of the case.

30. An apprehension was expressed by the prosecuting agency that accepting compromise after conviction for a non-compoundable offence that could result in acquittal of the convict was likely to be misused and would also give scope to mischief. This apprehension expressed by the State cannot be said to be misplaced. The timing of such compromise is an important factor which has been noticed even by the Hon'ble Supreme Court in ***Narinder Singh*** (supra). There is always possibility of the accused taking a chance at the trial and only after conviction making an attempt to come forward to seek to settle his dispute with the informant/complainant. The Hon'ble Supreme Court has thus in paragraph 29.7 of the decision in ***Narinder Singh*** (supra) observed that mere compromise between the parties should not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial Court. It thus appeals to logic that post-conviction compromise by itself is not sufficient to acquit the convict of the offence that has been held to be proved to have been committed by him by the trial Court. Yet another aspect that has been taken note of by the Hon'ble Supreme Court in ***Ramesh Vs. State of Haryana (2017) 1 SCC 529*** is the culture of compromise. It was noted that it had become a common phenomenon and almost a regular feature of witnesses turning hostile in criminal cases. It was observed that during the trial compromise acts as a tool in the hands of the defence lawyers and the accused pressurise the complainants/victims to change their testimonies in a Court room. Though these observations were made in the context of lack of any witness protection programme the same cannot be ignored when the issue pertains to

seeking to acquit the convict only on the ground of he having entered into a compromise with the informant/complainant after his conviction.

31. We also find the reference made to Section 75 of the Penal Code by Shri Yash Venkatraman, learned Advocate to be relevant in this context. Section 75 of the Penal Code prescribes for enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction. The intention is therefore to impose enhanced punishment if an accused is found guilty for a subsequent offence. Accepting compromise and setting aside the judgment of conviction could in a given case render the operation of Section 75 of the Penal Code impossible in case of a subsequent conviction of the same accused. If an earlier conviction is set aside on the ground of compromise there would be no occasion to impose enhanced punishment under Section 75 of the Penal Code on a subsequent offence being committed by the same accused.

We also find that the reference to the reformative theory sought to be espoused by some learned Advocates to be not very relevant while answering the question as referred. The theory of deterrence/reformation is a part of sentencing policy and the same would come into play when the Court proceeds to impose appropriate sentence after finding the guilt of the accused to be duly proved. It would be for the Court imposing the sentence to take into consideration the principles of the deterrent/reformative theory in the facts of the case. Similarly reference to the 327$^{th}$ Report of the Law Commission and its recommendation with regard to increasing the number of compoundable offences would not be very relevant in the present context. As long as the recommendations as made by the Law Commission are not accepted by the legislature and brought on the statute book, the Courts would be solely guided

by the provisions of Section 320 of the Code as it stands. At the highest the said reports merely have recommendatory value and nothing more as the Court is not empowered to amend the provisions of Section 320 of the Code so as to include/ exclude any offence from the enumerated list of compoundable offences.

32. Shri A.S.Mardikar, learned Senior Advocate sought to invoke the principle of stare decisis to urge that since this Court had been entertaining applications under Section 482 of the Code wherein a compromise was entered into between the victim/complainant and the accused even after conviction this Court should be slow in holding against that practice. We have noted above the consistent line of decisions of the Hon'ble Supreme Court wherein it has been held in clear terms that settlement or compromise by itself cannot be a ground for setting aside conviction for a non-compoundable offence. In fact, even in offences that are of a private nature and not having a serious impact on society, the Hon'ble Supreme Court has maintained the conviction of the accused but has reduced the sentence as imposed. If jurisdiction was being exercised under Section 482 of the Code by this Court in some cases but such exercise of jurisdiction was not in accord with the law of the land such practice cannot be saved by applying the principle of stare decisis. While applying the said principle, binding precedents on this Court cannot be ignored or given a go-by lest it may result in not following the law of the land. The said submission therefore does not deserve acceptance.

33. While answering Question (A) we may observe in the light of the settled legal position as under :

At the conclusion of the criminal trial the Court on finding the

evidence on record led by the prosecution to be sufficient to prove the guilt of the accused would proceed to convict the accused. The remedy of challenging the order of conviction is available to the accused by way of an appeal. Any compromise entered into post-conviction for a non-compoundable offence cannot by itself result in acquittal of the accused. Similarly, the Court has no power to compound any offence that is non-compoundable and not permitted to be compounded under Section 320 of the Code. The compromise entered into therefore is just a mitigating factor that can be taken into account while hearing the appeal/revision challenging the conviction and which factor has to be taken into consideration while imposing appropriate punishment/sentence. It is not permissible to set aside the judgment of conviction at the appellate/revisional stage only on the ground that the parties have entered into a compromise. In a given case the appellate Court/revisional Court also has the option of not accepting the compromise. Thus if the judgment of conviction cannot be set aside in an appeal/revision only on the ground that the parties have entered into a compromise similar result cannot be obtained in a proceeding under Section 482 of the Code.

Hence, we hold that ordinarily the contention that the convict and the informant/complainant have entered into a compromise after the judgment of conviction can be raised only before the appellate/revisional Court in proceedings challenging such conviction. It would be a sound exercise of discretion under Section 482 of the Code and in accordance with the law of the land to refuse to quash criminal proceedings post-conviction for a non-compoundable offence only on the ground that the parties have entered into a compromise. Instead the Court can permit the convicted party to bring to the

notice of the appellate/revisional Court the aspect of compromise. Having said so, it is only in rarest of rare cases that the Court may quash the criminal proceedings post-conviction for a non-compoundable offence on settlement between the convict and the informant/complainant. To illustrate, where a jurisdictional issue going to the root of the matter is raised for challenging the conviction or in matrimonial disputes where the parties have agreed to settle their differences, jurisdiction under Section 482 of the Code could be exercised. Such exercise of jurisdiction should be limited to the rarest of rare cases when found necessary to prevent the abuse of the process of the Court or to secure the ends of justice. Thus while holding that inherent power under Section 482 of the Code could be exercised for quashing criminal proceedings even at the appellate/revisional stage as held in ***Kiran T. Ingale*** (supra) such exercise of jurisdiction should be limited to the extent stated hereinabove. The ratio of the decision in ***Kiran T. Ingale*** (supra) has to be applied subject to aforesaid limitations. Further, the expression "criminal proceedings" would cover the entire journey of the proceedings commencing from its initiation till the proceedings culminate giving it seal of finality. Question (A) is answered accordingly.

**QUESTION (B) :**

34. In the order of reference dated 29.10.2020 the Division Bench has posed a question as to whether in criminal cases wherein offences under Sections 307, 354-A, 354-B of the Penal Code and like offences are involved as well as cases having economic flavour but which have tendency to affect large section of the society which are otherwise non-compoundable and have resulted in conviction could be considered as falling in the category of criminal cases

having predominantly civil flavour especially when these were crimes against the society and settlement between the accused and the victim ought to be considered as not being relevant and material. The Division Bench then found itself not in a position to agree with the proposition that in cases that have led to conviction of the accused after due trial, an application for settlement between the accused and the complainant/victim could be entertained and the conviction itself could be quashed. It is in the aforesaid backdrop that Question (B) has been framed which reads thus :

> ***Question (B) :*** *Whether the broader principles/parameters as set out in Gian Singh vs State of Punjab and another (2012) 10 SCC 303, Narinder Singh vs. State of Punjab (2014) 6 SCC 466 and Parbatbhai Aahir and others vs. State of Gujrat (2017) 9 SCC 641 have been correctly applied in deciding Udhav Kisanrao Ghodse, Ajmatkhan Rahematkhan and Shivaji Haribhau Jawanjal ?*

It is a settled position of law that a reference to a larger Bench is on a question/principle of law. The larger Bench has to take into consideration the appropriate principle of law that would be applicable and it is not concerned with the actual outcome of the proceedings that have led to the reference in question. In this context it would be apposite to refer to the observations in paragraphs 12 and 13 of the decision in ***Gopakumar B. Nair*** (supra) while explaining the basis on which the larger Bench has to answer the reference as made. It has been observed thus :

> "12. Reference of a case to a larger Bench necessarily has to be for a reconsideration of the principle of law on which the case has been decided and not the merits of the decision. The decision rendered by any Bench is final inter parties, subject to the power of review and the curative power. Any other view would have the effect of conferring some kind of an appellate power in a larger Bench of this Court which cannot be countenanced. However, the principle of law on which the decision based is open to reconsideration by a larger Bench in an appropriate case. It is from the aforesaid perspective that the

> reference in *Gian Singh* has to be understood, namely, whether quashing of a non-compoundable offence on the basis of a compromise/settlement of the dispute between the parties would be permissible and would not amount to overreaching the provisions of Section 320 of the Code of Criminal Procedure. In fact, this is the question that was referred to the larger Bench in *Gian Singh* and not the merits of the decision in *Nikhil Merchant*.
>
> 13. The decision in *Gian Singh* holding the decision rendered in *Nikhil Merchant* and other cases to be correct is only an approval of the principle of law enunciated in the said decisions i.e. that a non-compoundable offence can also be quashed under Section 482 CrPC on the ground of a settlement between the offender and the victim. It is not an affirmation, for there can be none, that the facts in *Nikhil Merchant* justified/called for the due application of the aforesaid principle of law. Also, neither *Nikhil Merchant* nor *Gian Singh* can be understood to mean that in a case where charges are framed for commission of non-compoundable offences or for criminal conspiracy to commit offences under the PC Act, if the disputes between the parties are settled by payment of the amounts due, the criminal proceedings should invariably be quashed. What really follows from the decision in *Gian Singh* is that though quashing a non-compoundable offence under Section 482 CrPC, following a settlement between the parties, would not amount to circumvention of the provisions of Section 320 of the Code, the exercise of the power under Section 482 will always depend on the facts of each case. Furthermore, in the exercise of such power, the note of caution sounded in *Gian Singh* (para 61) must be kept in mind. This, in our view, is the correct ratio of the decision in *Gian Singh*.

It is thus clear that the larger Bench is necessarily concerned only with the principle of law or question of law referred to it for decision and it is not required to go into actual merits of the decision. It is one thing to say that there is disagreement with the principle of law on the basis of which an earlier decision was rendered and it is another thing to seek to examine if such principle of law has been correctly applied in the given case. Whether the principle of law/provision of law has been correctly applied in deciding a particular case or not would be the province of an appellate forum. Thus while taking note of the disagreement as expressed by the Division Bench in ***Maya***

***Sanjay Khandare and another(APL No.709/2020)*** while referring the questions framed to a larger Bench, we do not find it necessary to individually examine the decisions rendered in ***Udhav Kisanrao Ghodse, Ajmatkhan Rahematkhan and Shivaji Haribhau Jawanjal*** (supra) to determine whether the principles/parameters as set out in ***Gian Singh, Narinder Singh, Parbatbhai Aahir*** (supra) have been correctly applied or not.

It is however seen that in ***Uddhav Kisanrao Ghodse*** (supra) the Court proceeded to permit the parties to compound offences punishable under Section 354 of the Penal Code. In ***Ajmatkhan Rahematkhan*** (supra) the parties were permitted to compound offences under Sections 354 and 452 of the Penal Code. Such permission to compound non-compoundable offences would be against the law laid down by the Full Bench in ***Abasaheb Yadav Honmane*** (supra) which has re-affirmed the legal position in that regard. It may be noted that one of the issues decided by the Division Bench in ***Shivaji Haribhau Jawanjal*** (supra) was with regard to exercise of powers under Section 482 of the Code for quashing criminal proceedings post-conviction of the accused. We find no difficulty in recognizing such power as held in ***Kiran T. Ingale*** (supra), subject to the limitations as expressed while answering Question(A). However, it is found in ***Shivaji Haribhau Jawanjal*** (supra) that the judgment of conviction passed by the learned Magistrate under Sections 354, 452, 323 and 506 of the Penal Code and confirmed in appeal by the Sessions Court has been set aside while accepting the compromise. In Criminal Application (APL) No.430/2019 (Sandip Ramdas Ravekar Vs. State of Maharashtra) decided on 28.07.2020 to which one of us (A. S. Chandurkar, J.) was a party, the decision in ***Shivaji Haribhau Jawanjal*** (supra) was followed and the conviction of the accused

under Sections 354, 452 read with Section 323 of the Penal Code was set aside in view of settlement of disputes between the parties. Since we have held that compromise by itself is not sufficient to set aside the order of conviction for a non-compoundable offence, setting aside the order of conviction as directed is contrary to the decision in ***Surendra Nath Mohanty and another*** (supra). Question (B) stands answered accordingly.

Before concluding we wish to place on record our sincere appreciation for the efforts taken by all the learned counsel while assisting the Court in answering the reference.

The Criminal Application be placed before the Division Bench for its adjudication on merits.

(N.B.SURYAWANSHI) JUDGE

(VINAY JOSHI) JUDGE

(A.S.CHANDURKAR) JUDGE

Andurkar..