**CASE ANALYSIS OF**

**DAMODAR S. PRABHU V. SAYED BABALAL H**

By-

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# Facts

The parties engaged in the financial transactions and there was a conflict about the dishonor of the appellant's five cheques. The parties then went through the different phases of the litigation until it reached the Supreme Court of India by special leave petition (Article 136 of Indian Constitution). The appellant and the respondent reached a compromise and requested for the compounding of the offence as envisaged in Section 147 of the Act. With respect to the impugned judgments delivered by the High Court of Bombay, the appellant has prayed for the setting aside of his conviction in these matters by relying on the consent terms that have been arrived at between the parties.

# What is Compounding?

Compounding the crime in common legal jargon implies that the victim and the accused resolve their differences mutually, cordially and peacefully, putting a halt to the subsequent proceedings. Compounding is an act under which a complainant decides not to sue the victim for compensation or some other remuneration. The consequence is a waiver of the sentence for the accused. Compounding means a split of satisfaction in favor of the sufferer, although it does not need to be financial; it suffices if it serves as an incentive for the victim to avoid suing the perpetrators and to be assured that they want a mutual settlement of the conflict without any coercion or compulsion from any quarter. Section 147 of the Negotiable Instrument Act deals with the offences to be compoundable. It states that “Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.”

# Before the Insertion of Section 147

Even before the inclusion of Section 147 in the Act some High Courts had allowed the compounding of the offence. For Instance, a division Bench of the Honorable Supreme Court in **O.P. Dholakia v. State of Haryana[[1]](#footnote-2)** allowed the compounding of the felony given the fact that all three approved courts affirmed the prosecution. Having noted that the appellant had already entered into a settlement with the plaintiff, the bench had dismissed the State's contention that the verdict of the court on sentencing could not be interfered with because it was accessible to the parties to create a settlement earlier and that they did not do so. The bench had commented that “taking into consideration the nature of the offence in question and the fact that the complainant and the accused have already entered into a compromise, it would be appropriate to grant permission in the peculiar facts and circumstances of the case, to compound the offence”.

Similar reliefs were granted in **Sivasankaran v. State of Kerala & Anr.[[2]](#footnote-3)**, **Kishore Kumar v. J.K. Corporation Ltd.[[3]](#footnote-4)** and **Sailesh Shyam Parsekar v. Baban[[4]](#footnote-5)**, among other cases.

# Section 147 of Negotiable Instrument Act vs. Section 320 of CRPC

Compounding offenses in compliance with section 147 of the Negotiable Instruments Act of 1881 and the procedure envisaged by section320 of the  Code of criminal procedure would not be exclusively appropriate because the latter is for certain offenses listed under the Indian Penal Code. Section 320 applies to crimes which are compoundable by the parties without the Court's consent or only from the Court's consent depending upon the gravity of the offence. A table showing specific crimes punishable under the IPC and the individual against whom the crime can be compounded has been given under Article 320(1) and (2) of the Law. The above crimes can be divided into two groups, which are minor and grave. Compounding is only allowed with the approval of the Court in the case of any grave offences. High courts or Session courts, which exercise their revisional powers, may authorize the compounding of the crime in the manner given by that Section. However in the case of offence under Section 138 of NI Act, the legislature considered it appropriate to permit compounding without the Court's leave in favor of the offence since the cheque is  normally dishonored by contractual transactions between private parties. That is why section 147 ends along with a non obstante provision to exclude it from the control of section 320 of the CRPC. Article 147 of the Law on the Negotiable Instruments of 1881 allows for the compounding of offenses prescribed under the same act as an authorized clause and thus constitutes an exception from the general rule incorporated in sub-Section (9) of Section 320 of the CRPC which states that “No offence shall be compounded except as provided by this Section”. A plain interpretation of this section will lead one to the assumption that offences punished under legislation other than the Indian Penal Code cannot be compounded as well. However, since a specific law provision has been introduced in Section 147, the same is going to circumvent the influence of Section 320(9) of the CRPC[[5]](#footnote-6).

In **Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.[[6]](#footnote-7)**, “it was examined whether an offence punishable under Section 138 of the Act which is a special law can be compounded. After taking note of a divergence of views in past decisions, the Apex Court took the position that this provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied”. Presumably, “Parliament also realised this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002)”.[[7]](#footnote-8)

The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in a decision of the Apex Court, reported as **K.M. Ibrahim v. K.P. Mohammed & Anr.**[[8]](#footnote-9), wherein Kabir, J. has noted “that as far as the nonobstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, no reason is found to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution”.[[9]](#footnote-10)

It would also be pertinent to refer to the Apex Court's decision in **R. Rajeshwari v. H.N. Jagadish** **[[10]](#footnote-11)** wherein S.B. Sinha, J. while referring to Section 147 of the Act observed that “Negotiable Instruments Act is a special Act and indisputably, the provisions of the Code of Criminal Procedure, 1973 would be applicable to the proceedings pending before the courts for trial of offences under the said Act. Stricto sensu, however, the table appended to Section 320 of the Code of Criminal Procedure is not attracted as the provisions mentioned therein refer only to provisions of the Penal Code and none other”.

# Compounding Provisions in Other Countries

Compounding a felony was an offence under the [common law of England](https://en.wikipedia.org/wiki/English_law#Common_law) and was classified as a [misdemeanor](https://en.wikipedia.org/wiki/Misdemeanour). It consisted of a prosecutor or victim of an offence accepting anything of value under an agreement not to prosecute, or to hamper the prosecution of, a felony. To “compound”, in this context, means to come to a settlement or agreement. It is not compounding for the victim to accept an offer to return stolen property, or to make restitution, as long as there is no agreement not to prosecute.[[11]](#footnote-12)

Under the common law, compounding a felony was punishable as a misdemeanor. Many states have enacted statutes that punish the offense as a felony. Compounding a misdemeanor is not a crime. However, an agreement not to prosecute a misdemeanor is unenforceable as being contrary to public policy. Criminal liability for compounding is pervasive in American law, at least in theory. In forty-five states, the compounding of a crime may be prosecuted as a statutory offense, in two others it apparently may be prosecuted as a common law offense[[12]](#footnote-13). Compounding has been abolished in the Republic of Ireland, England and Wales, New South Wales and in Northern Ireland.

# Reasons for Issuing Guidelines Related to Compounding

Chapter XVII comprising Sections 138 to 142 was inserted into the Negotiable instrument Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). The primary aim for the entry into force of Section 138 was to create confidence in the efficiency of banking systems and integrity of business processes by means of negotiable instruments, eliminating the need for paper currency. It was planned to render the drawer responsible for fines if cheques were to be rebound due to inadequate procedures by the drawers with adequate protections to avoid abuse of honest drawers. If the cheque is dishonored for insufficiency of funds in the drawer's account or if it exceeds the amount arranged to be paid from that account, the drawer will be punished by a sentence of two years imprisonment or a penalty that can correspond to two times the value of the cheque or both. It should be remembered that the penal clause above was inserted into the Legislation in 1988 which brought the detention period up to one year, which was extended up to two years after the act was updated in 2002. It is therefore clear that the statutory purpose was to include an effective criminal solution to prevent the alarmingly high rate of cheque dishonor. The threat of detention for a term of up to two years, on the one side, offers a deterrent remedy; it is a more fundamental compensation intention to levy a penalty that may surpass twice the value of a cheque. The dishonor of a cheque is to be better characterized as a statutory violation that has been inserted in the Law to protect the public interest and guarantee that such instruments are accurate.

The reality that the existence of a robust statutory redress has contributed to a substantial number of cases related to the felony envisaged under Section 138 of the Act. Too much, that our criminal justice institutions are being stunned by a shockingly high amount of instances concerning the dishonor of cheques, particularly at magistrate level. Mr. Goolam E. Vahanvati, Solicitor General Attorney- General for India while appearing as amicus curiae in this case referred to the facts herein to show how participants involved in cheque bounce cases typically try to compound the crime at a late point. It is easier to support the interests of justice if parties are able to compound themselves as an early stage route to settle their disagreements rather than to continue to several courts, thus creating unnecessary delays, expense, and pressure on behalf of the judiciary. This is obviously a question of interest as Section 147 of the Act does not indicate when the stage is suitable for the crime to be compounded and if the same should be achieved either at the complainant's request or with the Court's permission[[13]](#footnote-14). The educated lawyer stressed the value of utilizing compounding as an effective way of increasing the disposition of crimes. The learned attorney General recommended in this regard that the Court could create such rules to prevent litigants from pursuing an unnecessarily late compounding of the offence. In other words, judicial guidelines were required to enable litigants to opt out of compounding in cheque bounce cases in the early stages of prosecutions and thereby reduce the arrears.[[14]](#footnote-15)

# Whether Compounding can be Claimed as a Right?

The next crucial question which came into cognizance was whether compounding can be claimed as a right? A clear reading of Article 147 can give rise to doubts as to whether compounding is an accused right or it's up to plaintiff's consent. Compounding a crime is not a one-sided gesture, which should therefore not be done until the victim agrees of compounding. Compounding means the reciprocal agreement of the accused and the complainant, and thus no offence may be compounded except at the accused's acceptance. The guidelines laid down in **Damodar.S.Prabhu v. Sayed Babalal H.[[15]](#footnote-16)** suggest that “compounding can/may be allowed at various stages of the trial after imposition of a certain percentage of costs upon the accused”. The word categorically used and emphasized upon in the said guidelines is “compounding” and as already discussed above no offence can be compounded without the assent of the complainant. The expression 'compounding' is the phrase categorically used in these guidelines and no offence should be escalated without the complainant's permission, as already mentioned. There is no provision for a mandatory termination of the case or for the prosecution to be settled where the complainant agrees to pay the balance of the cheque. As such, it is difficult to extend the control and instructions to situations in which the appellant is unable to accept the amount of the cheque, nor is the court able to coerce the defendant to acknowledge the tender and drop his complaint under any rules of law. It needs to be noted that the Magistrate has no real, implicit or intrinsic right in any case to quash the proceedings.

In **Patri Mahesh v. State of Andhra Pradesh[[16]](#footnote-17)** the aspect of consent of the complainant again cropped up for consideration. “It was argued that under Section 147 of the Act, every offence punishable under the Act shall be compoundable and therefore, once the petitioner/accused expressed his willingness to deposit the cheque amount, the case against him shall be withdrawn irrespective of the fact whether the complainant consented for it or not. In a way, his contention was that consent of the complainant is irrelevant for compounding the offence as soon as the petitioner/accused is prepared to deposit the cheque amount. It was also contended that the procedure contemplated under Section 320 of Criminal Procedure Code for compounding offences cannot be adapted to the offences punishable under Section 138 of the Act. In support of above contentions, reliance was placed on the judgment of Supreme Court in **Damodar S.Prabhu v. Sayed Babalal H[[17]](#footnote-18)** Per contra; learned counsel appearing for the respondent-complainant submitted that the consent of the complainant is essential for compounding the offence under Section 147 of the Act and therefore, the trial Court is justified in dismissing the application filed by the petitioner/ accused to the extent of withdrawing the complaint against him. It was also contended by him that Section 147 does not contemplate the procedure for compounding offences and therefore, the procedure contemplated under Section 320 CRPC is required to be adopted”. In support of his submissions, reliance was placed on the judgment of Supreme Court in **JIK Industries Ltd. v. Amarlal V.Jumani[[18]](#footnote-19)** wherein it had been held that , “Section 147 of the Negotiable Instruments Act must be reasonably construed to mean that as a result of the said Section the offences under Negotiable Instruments Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be whisked away nor can the same be substituted by virtue of Section 147 of Negotiable Instruments Act”.

The court after appraisal of the rival views expressed above held that “it is a settled proposition of law that consent of the complainant is essential for compounding the offence under Section 138 of Negotiable Instruments Act and as the complainant is not consenting for withdrawal, the trial Court is justified in dismissing the application. There is no flaw in the order passed by the trial Court warranting interference of the Apex Court in exercise of power under Section 482 CRPC”

# Judgment

**Guidelines on Compounding**

(a) The Honorable Supreme Court made it clear 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.[[19]](#footnote-20)”

(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.”[[20]](#footnote-21)

(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.”[[21]](#footnote-22)

(d) Finally, “if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.”

**On Deposition of Fine**

The Supreme Court clarified “that any 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. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Sessions, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority”[[22]](#footnote-23).

**On Multiple Complaints**

The Supreme Court said “we are also in agreement with the Learned Attorney General's suggestions for controlling the filing of multiple complaints that are relatable to the same transaction. It was submitted that complaints are being increasingly filed in multiple jurisdictions in a vexatious manner which causes tremendous harassment and prejudice to the drawers of the cheque. For instance, in the same transaction pertaining to a loan taken on an installment basis to be repaid in equated monthly installments, several cheques are taken which are dated for each monthly installment and upon the dishonor of each of such cheques, different complaints are being filed in different courts which may also have jurisdiction in relation to the complaint. In light of this submission, we direct that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200 of the CRPC. If it is found that such multiple complaints have been filed, orders for transfer of the complaint to the first court should be given, generally speaking, by the High Court after imposing heavy costs on the complainant for resorting to such a practice. These directions should be given effect prospectively”.

**Concluding Remarks**

The Apex Court while laying down the above guidelines also stated that “the judicial endorsement of the above quoted guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to precede with the compounding of offences under the Act. The scheme contemplated under Section 320 of the CRPC cannot be followed in the strict sense. In view of the legislative vacuum, there is no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end. Even in the past, the Court has used its power to do complete justice under Article 142 of the Constitution to frame guidelines in relation to subject-matter where there was a legislative vacuum”.

# Overview of the Judgment

The Hon’ble Supreme court in the case of “Damodar S Prabhu Vs Sayed Babalal H” observed that Section 147 does not carry any guidance as to how to proceed with compounding of offences. Further provisions of Section 320 of CRPC also cannot be applied. The Hon’ble Apex Court by exercising its power under Article 142 of the constitution laid down guidelines for encouraging compounding at the earliest stage.

It has been clarified by the Hon’ble Supreme court in the above case that the above scale is indicative and discretion is vested in the court dealing with the matter. In other words the court dealing with the matter has to take into account facts of each case before it, for imposing costs which will be deposited with appropriate Legal services authority.

The judgment indicates that dishonest drawers must be made to pay for not only the cheque amount, but also compensation for the extended litigation. The judgment of Supreme Court ensures less litigation in 138 cases and also expeditious disposal of 138 cases.

**References**

* Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663.
* O.P. Dholakia v. State of Haryana, (2000) 1 SCC 672.
* Sivasankaran v. State of Kerala & Anr.,(2002) 8 SCC 164.
* Kishore Kumar v. J.K. Corporation Ltd. (2004) 12 SCC 494.
* Sailesh Shyam Parsekar v. Baban, (2005) 4 SCC 162.
* Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd., (2008) 2 SCC 305.
* K.M. Ibrahim v. K.P. Mohammed & Anr. 2009 (14) SCC 262.
* R. Rajeshwari v. H.N. Jagadish, (2008) 4 SCC 82.
* JIK Industries Ltd. v. Amarlal V.Jumani, (2012) 3 SCC 255.
* Compounding offences under negotiable Instrument Act 1881, Tax Guru.
* The Legal Blog. in
* Ayushi Tripathi, ‘compounding of offences’ (2019) Law times Journal.
* Boyce & Perkins, Criminal Law, 3rd ed. (1992).
* Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002.

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1. (2000) 1 SCC 672. [↑](#footnote-ref-2)
2. (2002) 8 SCC 164 [↑](#footnote-ref-3)
3. (2004) 12 SCC 494 [↑](#footnote-ref-4)
4. (2005) 4 SCC 162. [↑](#footnote-ref-5)
5. Prefatory Note, Statement of Objects and Reasons, Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. [↑](#footnote-ref-6)
6. (2008) 2 SCC 305. [↑](#footnote-ref-7)
7. ibid. [↑](#footnote-ref-8)
8. 2009 (14) SCC 262. [↑](#footnote-ref-9)
9. ibid. [↑](#footnote-ref-10)
10. (2008) 4 SCC 82. [↑](#footnote-ref-11)
11. Boyce & Perkins, Criminal Law, 3rd ed. (1992) at 578. [↑](#footnote-ref-12)
12. Ayushi Tripathi, ‘compounding of offences’ (2019) Law times Journal <http://lawtimesjournal.in/compounding-of-offences/> as accessed 20 April 2020. [↑](#footnote-ref-13)
13. *Damodar S. Prabhu versus Sayed Babalal H.,* (2010) 5 SCC 663. [↑](#footnote-ref-14)
14. (2010) 5 SCC 663. [↑](#footnote-ref-15)
15. *ibid.* [↑](#footnote-ref-16)
16. Criminal Petition No.5315 of 2010 decided on 27.08.2012. [↑](#footnote-ref-17)
17. (2010) 5 SCC 663. [↑](#footnote-ref-18)
18. (2012) 3 SCC 255. [↑](#footnote-ref-19)
19. *Damodar S.Prabhu v. Sayed Babalal H*. (2010) 5 SCC 663. [↑](#footnote-ref-20)
20. *Ibid.* [↑](#footnote-ref-21)
21. *ibid.* [↑](#footnote-ref-22)
22. ibid. [↑](#footnote-ref-23)