

Daggupati Jayalakshmi Vs. the State

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Court : Andhra Pradesh

Decided On : Jun-23-1993

Reported in : 1993CriLJ3162; II(1993)DMC581

Judge : G. Radhakrishna Rao and ;S.V. Maruthi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109; Evidence Act - Sections 113-A; Hindu Marriage Act; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Misc. Petn. No. 988 of 1993

Appellant : Daggupati Jayalakshmi

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Syed Shareef Ahmed, ;M. Subba Reddy and ;V. Mallik, Advs.

Judgement :

G. Radhakrishna Rao, J.

1. This matter has come up for hearing before this Bench on a reference made by our learned brother D. J. Jagannadha, J., vide his order dated 6th April, 1993

made in Crl.M.P. No. 988 of 1993.

2. Crl.M.P. No. 988 of 1993 is a petition filed by Smt. Daggupati Jayalakshmi, the de facto-complainant, under section 482 of the Code of Criminal Procedure, to direct the Munsif-Magistrate, Ponnur to permit her to withdraw the case pending before him in C.C. No. 10 of 1993, on his file, by compounding the offences under sections 498A, 323 and 494 read with Section 109 of the Indian Penal Code against A-1 to A-7.

3. Relying upon T. Venkatalakshmi v. State of Andhra Pradesh, (1990) 3 Andh LT 424 : (1991 Cri LJ 749), it was contended before our learned brother D. J. Jagannadha Raju, J. that the court by exercising the inherent power under section 482 of the Code of Criminal Procedure, has got the power to permit the petitioner to have the offences compounded even though the offences under section 498A of the Indian Penal Code is non-compoundable. In the above decision of T. Venkatalakshmi v. State of A.P., cited before the learned single Judge, after referring to the decision of the Supreme Court reported in Mahesh Chand v. State of Rajasthan, : 1988 CriLJ121 , it was observed as follows (at pp. 750-751 of 1991 Cri LJ 749) :-

'Though in the instant case, the wife made a report to the police regarding the cruelty meted out to her at the hands of her husband, the parties had some reconciliation, there were talks for settlement and there was an agreement between the spouses to lead a harmonious matrimonial life. Since the basic object of any matrimonial law is to facilitate a happy and harmonious marital life between the spouses - though under different circumstances they approached the court - the permission sought for to compound the offence under section 498-A, I.P.C. pursuant upon the settlement and understanding between the spouses to amicably live together with harmony, can be accorded by the High Court under section 482, Cr.P.C.'

However, the learned single Judge before whom the present petition under reference has come up for hearing, while observing :

'I am prima facie of the view that a court exercising powers under Section 482, Cr.P.C., cannot go beyond the words of the statute. An offence, which is not compoundable, cannot be made compoundable because the court has the sympathy for the accused in the particular facts of the case. The powers of the Supreme Court stand on a totally different footing. I for one do not feel that the High Court has any power to permit compounding of the offence under section 498A, I.P.C., which is non-compoundable according to the Code.'

referred the matter to a Division Bench for having a final and authoritative pronouncement. Thereupon, this petition has been posted before this Bench for hearing.

4. Before delving deep into the matter, it would be necessary to refer to the salient facts of the case to high-light the controversy in issue, which are as follows :-

The petitioner married on Daggupati Venkata Siva Nagendra Prasada Rao, A-1 in C.C. No. 10 of 1993 on the file of the Judicial Magistrate of the First Class, Ponnur. Their marriage was performed on 16-10-1983 in accordance with the Hindu customs. Thereafter the marriage was consummated. They lived together happily for some time and begot twin children. Subsequently disputes arose between the couple and A-1 left the company of the petitioner and lived separately in the house of one Kona Venkata Ramana (A-4). It is further the case of the petitioner that on 1-6-1991 at about 4.30 a.m. A-1 married one N. V. Ratnakumari (A-2) in front of the house of one Kona Radhakrishna Murthy (A-2) in accordance with the Hindu customs. After coming to know about the marriage, the petitioner lodged a report before the police on 23-4-1992 and the same was registered as Crime No. 55 of 1992 under sections 498A, 494 and 323, I.P.C. and after completing the investigation, charge-sheet was filed against the accused before the Judl. Magistrate of the First Class, Ponnur in C.C. No. 10 of 1993. The petitioner has also filed M.C. No. 17 of 1992 before the V Metropolitan Magistrate, Hyderabad claiming maintenance at the rate of Rs. 1500/- per month for herself and for her children. At the intervention of the elders and relatives of the petitioner and her husband (A1), the dispute between the couple was compromised and a compromise memo was filed in the court of the V Metropolitan Magistrate, City

Civil Court and the compromise was recorded and M.C. 17 of 1992 filed by the petitioner claiming maintenance was disposed of on 12-2-1993 in terms of the compromise. As per the terms of the compromise the petitioner and her husband (A-1) agreed to lead a happy marital life with their two children without any disputes. The petitioner submits that as the matter was been amicably settled and they are living together and as the object of any matrimonial law is to facilitate happy and harmonious marital life between the spouses, she wants to withdraw the case filed by her against her husband and others in C.C. No. 10 of 1993 on the file of the Judicial Magistrate of the First Class, Ponnur. As one of the offences, viz., offence under Section 498A of the Indian Penal Code is not a compoundable offence under section 320 of the Code of Criminal Procedure, she has filed the present petition under section 482 of the Code of Criminal Procedure with a prayer to permit her to compound the offence under S. 498A of the Indian Penal Code and to withdraw the case, viz., C.C. No. 10 of 1993 filed by her.

5. It is contended by Sri. Syed Shareef Ahmed, learned Counsel appearing on behalf of the petitioner, that in view of the judgment of a learned Single Judge of this Court, reported in T. Venkatalakshmi v. State of A.P. (1991 Cri LJ 749) (supra), referred to supra, and in view of the judgment of the Supreme Court, reported in Mahesh Chand v. State of Rajasthan (1989 Cri LJ 121) (supra), referred to supra, this Court is competent, in exercising its inherent powers under section 482 of the Code of Criminal Procedure, to grant permission to compound the offence under section 498A, I.P.C. It is also contended by the learned Counsel that in matrimonial cases when the husband and wife want to live together happily forgetting everything about the allegations and counter-allegations levelled against each other, it is for the court to create an atmosphere by giving a seal for their ambition to re-unite and live together.

6. On the other hand, it is contended by the learned Public Prosecutor that the offence under section 498A, I.P.C. is non-compoundable and that the court has no power to permit the parties to compound the offence particularly in view of Section 320 of the Code of Criminal Procedure which excludes S. 498A, I.P.C. from being compounded with or without the permission of the court.

7. Section 498A of the Indian Penal Code comprising of an independent chapter was inserted by the Criminal Law (Second Amendment) Act, 1983 (46 of 1983) with effect from 25th December, 1983. Traditionally, in any society, the woman is subjugated to the whims and caprices of the man especially in the relationship between husband and the wife. Life for woman in the family of the husband is sometime so miserable and intolerable that the drudgery is sometime put to an end by suicide and yet a successful suicide was beyond the pale of municipal law. Short of physical cruelty, the mental cruelty making continued existence an intolerable drudgery was not punishable. If ultimately the wife commits suicide, the guilty escaped punishment for want of an adequate provision. Conscience of the modern society violently reacted to this lacuna in the law. Introduction of this Chapter XX-A reflects the anxiety of the Parliament to extend protection to the weaker spouse. Section 498A, Penal Code and Section 113A, Evidence Act also include in their amplitude the past events of cruelty prior to the coming into force of these two sections. So the main allegation that can be made in a complaint filed by a wife relates to the past events. In the event of their re-uniting together after a compromise has been settled at the instance of the well-wishers and elders and if the parties want to speak the same in the court, it will be an embarrassing situation for them. When a particular offence is alleged to have been made against another party, and if it is compoundable, the parties are at liberty to compound the same with or without the permission of the court, as the case may be. If it is a non-compoundable offence, it has to be presumed that the Legislature has thought it fit that it is serious case where it cannot be compounded. In such a situation the concerned court has no power to compound the same as there is a specific bar. So the general principle that can be enunciated is that in the case of a non-compoundable offence, the court has no power to permit the parties to compound the same.

8. Section 498A of the Indian Penal Code was introduced in the year 1983, after a long lapse of time. Indian Penal Code was introduced in the year 1860. In view of the agitation from different quarters regarding the husband or relatives of the husband of a woman subjecting her to cruelty, the Parliament thought it fit to introduce this Chapter XX-A containing Section 498A of the Indian Penal Code and in view of the seriousness of the offence, it was made non-compoundable.

When once the Legislature thought it fit to make the offence under section 498A introduced under Chapter XX-A as non-compoundable, we have to consider whether under section 482 of the Code of Criminal Procedure the High Court has got inherent power to permit the parties to compound the offence under section 498A, I.P.C. It may be remembered that even under the Hindu Marriage Act where the parties made serious allegations of adultery, and cruelty etc., still the Legislature thought it fit to introduce a clause to the effect that the court before the commencement of the trial, has to make an attempt for reconciliation. Even when serious allegations are made against each other, the court has to make a genuine effort for reconciliation. If that reconciliation ended in fruitful success of making the parties reunited, the concerned Judge would not proceed with the matter further. Similarly when serious allegations are made in a complaint which made the court to take cognizance of the same, can we say whether the court can continue the proceedings involving non-compoundable offence even after the parties (husband and wife) comprised the matter voluntarily and filed an application for permission to compound the offence. Certainly the Magistrate is not competent to permit the parties to compound a non-compoundable offence. Then what is the remedy that is available for the parties (husband and wife) to compound the offence of a non-compoundable nature. The only remedy available for the parties, as is contended by the learned Counsel for the petitioner, is the inherent power vested under section 482 of the Code of Criminal Procedure. In a given set of circumstances, to meet the ends of justice or to prevent abuse of the process of law, the court has got inherent power under Section 482 of the Criminal Procedure Code. When there is a clear section in the Criminal Procedure Code, viz., Section 320, making a particular offence as non-compoundable, whether the court can exercise the inherent power under section 482 and permit the parties to compound a non-compoundable offence. Let us examine the case law on the subject to arrive at a just decision on the controversy in issue.

9. In *Prakash v. State of Rajasthan*, (1992) 2 Cur Cri R 1375, the Rajasthan High Court considered the effect of withdrawing the litigation in respect of offence which are not compoundable and observed as follows :-

'I do feel that when both the parties are prepared to withdraw the entire litigation which has been filed by them against each other, the continuance of any proceedings in relation to F.I.R. No. 220/91 of Police Station, Kathoomar may be an impediment in their happy married life and even otherwise when the parties are prepared to resolve their all differences it will be an exercise in futility to allow any proceedings to go on in relation to aforesaid F.I.R. No. 220/91. Since the offences under which the case has been registered also include the offences which are not compoundable, it is deemed proper in the facts and circumstances of this case to order that the F.I.R. No. 220/91 shall not be acted upon and given effect to and no investigation proceedings shall be now taken and any proceedings taken so far shall not be used for any purpose, investigation shall be closed and this chapter be treated to be closed for ever. In these circumstances it is also ordered that the accused-petitioners Vol. 1 to 8 shall not be arrested in relation to F.I.R. No. 220/91.'

In *Arvind Bhushan Chugh v. Dr. Promila alias Ritu*, (1992) 3 Cur Cri R 2272, the Delhi High Court has considered whether a non-compoundable offence can be permitted to be compounded exercising the inherent power under section 482 of the Criminal Procedure Code. The relevant facts in that case are that after the marriage between petitioner No. 1 and the respondent differences arose and the marriage broke down irretrievably. On account of the fact that the respondent's 'Stridhan' was kept by the petitioner, she lodged a report with the police for return of her dowry articles as well as for cruelty on the basis of which a case was registered under sections 406/498A/34, I.P.C. Subsequently compromise was arrived at between the husband and wife as a result of which they filed a petition for divorce by mutual consent, and the marriage has been dissolved by mutual consent by the Additional District Judge, Delhi on 14th July, 1992. After dissolution of the marriage, parties sorted out their other differences also and settled dowry articles, past and future maintenance and decided not to continue with the litigation. After receiving the amount respondent No. 1 wants to withdraw the complaint. In those circumstances the learned Judge of the Delhi High Court observed as follows :-

'After receiving this amount, respondent No. 1 wants to withdraw her complaint and does not want to wash her dirty linen in public. The law is meant to do justice and not to force the parties for a protracted litigation. The court has inherent power to compound a non-compoundable offence when the interest of justice so requires. In this case since the complaint had arisen out of matrimonial differences which ultimately having been settled, I see no reason why they should continue with the criminal cases after they have settled their differences.'

Accordingly the learned Judge quashed the F.I.R. registered under sections 406/498A34, I.P.C. and all proceedings initiated on the basis of the said F.I.R. are ordered to be dropped.

10. In *Manoj Kumar Behl v. State*, (1992) 3 Cur Cri R 2939, also the complaint filed by the 2nd respondent for offences under sections 406/498A I.P.C. was allowed to be compounded and the proceedings are ordered to be dropped. The facts in this case are almost identical to the facts in the earlier case. The marriage between petitioner No. 1 and respondent No. 2 was solemnized on 17th January, 1986 at Delhi. The relation between the parties became strained as a result of which the marriage broke down irretrievably. A divorce petition was filed by mutual consent and it was granted, pursuant to the compromise entered into between the parties. In pursuance of this compromise, the petitioner had also filed an application before the Metropolitan Magistrate for the withdrawal of the complaint filed by the 2nd respondent under sections 406/498A. In those circumstances the Delhi High Court held as follows :-

'In view of the compromise arrived at between the parties pursuant to which they have mutually resolved their differences and got a divorce by mutual consent, I see no reason why the complaint filed by respondent No. 2 under section 406/498A, I.P.C. of P.S. Rajuri Garden be not allowed to be compounded. No useful purpose will be served for dragging the parties into litigation particularly when they have resolved their differences and settled all their disputes. In view of the fact that respondent No. 2 had already received a sum of Rs. 1,00,000/- by way of return of dowry and the maintenance, I think the ends of justice will be met if the complaint filed by her is allowed to be compounded and the proceedings

pursuance thereto pending in the court of Metropolitan Magistrate, Delhi are ordered to be dropped.'

In the State of Rajasthan v. Gopal Lal, (1992) 3 Cur Cri R 2953, the Rajasthan High Court while holding that where husband and wife started living amicably after settling all differences and nothing remains to be sorted out, continuance of proceeding under section 498A would be of no use, suggested that it is high time that the Legislature should consider whether offence under section 498A, I.P.C. should not be included in the list of offences under section 320, Cr.P.C. In that case also upon the reported of Smt. Tulsi Devi a Criminal Case under section 498A, I.P.C. was registered against her husband Gopal Lal and others and after due investigation the police filed a challan against the husband Gopal Lal and others. Subsequently on 26-10-1990 Tulsi Devi moved petition before the learned Additional Judicial Magistrate, Gangapur stating that she had compromised the matter with the respondent and she did not want to proceed with the case, and she prayed that she may be allowed to compound the offence. The learned Magistrate after hearing all concerned accepted the compromise and acquitted the respondents of the offence under section 498A I.P.C. Having been aggrieved by the said order of the Magistrate, the State has filed a petition for leave to appeal. In those circumstances the Rajasthan High Court observed as follows :-

'In the present case, there was a solitary case between the parties, which the parties have compromised. The wife has started living amicably with her husband. The wife has, thus condoned the offence of matrimonial cruelty. Under the Hindu Marriage Act, an act of cruelty by husband can be condoned by the wife and that puts an end to the offence of matrimonial cruelty. Technically speaking, a Hindu marriage like any other marriages is a union between two spouses but when we link to the Hindu society, it is a union between two families and is almost a social event where all friends and relatives participate. The matrimonial differences some time arise and may eventually lead to matrimonial disharmony. The Matrimonial Courts, as a measure of public policy, try for reconciliation between the parties so that the disputes are settled and a happy matrimonial life begins. In the present case, the learned Magistrate has acted wisely in permitting the parties to compound the offences. If the case would have been allowed to proceed, it would

have led to further ill-will between the wife on one hand and her husband and her in-laws on the other hand. I am surprised as to why the state has at all filed this petition for leave to appeal when the matter had been amicably settled between the parties. It does not behove the state of act in a too technical manner, in such matter. To my mind, reopening of the dispute is bound to create a storm in the calm waters of domestic felicity between husband and wife a situation which the state should not try to create. In my opinion, it is high time that the Legislature should consider whether offence under section 498A, I.P.C. should not be included in the list of offences under section 320, Cr.P.C.'

There is yet another case on the controversy, rendered by Orissa High Court, reported in *Md. Khalilur Rahman v. State of Orissa*, 1989 Cri LJ 1845. In this case also compromise was entered into between the wife and husband and pursuant to the said compromise a petition was filed to permit them to compound a non-compoundable offence. The Orissa High Court while dealing with the above petition observed as follows :-

'While it is without doubt that an offence under section 294, I.P.C. is not compoundable and an agreement reached to that effect is not enforceable in a court of law. I do not agree with the submission of Mr. Das that a prosecution which ex facie appears to this court to be an abuse of the process of the court and would degenerate itself to be a weapon of harassment should it continue, would yet leave this Court powerless to stifle at at the commencement. From the facts as narrated, it is apparent that all the disputes between the parties have subsided long back and even the petitioner and his wife are divorced. Even the circle Inspector of Police was himself a party to the agreement reached between the parties. In view of such circumstances continuance of prosecution under section 294, I.P.C. would not achieve any beneficial result nor would be in aid of either achieving any social or public justice which is the main aim of a criminal prosecutions have been quashed by invoking the inherent powers of court on account of long delay at the investigation stage, authority for which is available in : 1971 CriLJ1096 (*Chajoo v. Radhey*); (1979) 47 Cut LT 126 (*P. Chiranjivi v. Principal, M.K.C.G. Medical College*); (1981) 52 Cut LT 473 : (1982 Cri LJ NOC 17) (*Harekrushna Mahtab v. Republic of India*) and (1985) 1 Orissa LR 558 : (1985

Cri LJ 950) (Jogendra Mahanta v. State of Orissa). There is inherently no infirmity in invoking the same principle to be applied to the present case and hence since I am convicted that continuance of the prosecution would not achieve any tangible result, the same is hereby quashed.'

11. A careful analysis of all the above decisions would indicate that particularly in matrimonial cases when they end in divorce or re-union by mutual consent in pursuance of a compromise, the court is competent to permit the parties to compound a non-compoundable offence. No doubt some observations in general have been made but it cannot be said in all the offences arising under the Penal Code which are non-compoundable offences arising under the Penal Code which are non-compoundable offences simply because the parties have compromised the matter the court has to exercise its inherent power and allow the non-compoundable offence to be compounded. The relationship between the parties, the background of the case, the effect of the couple being re-united and their effect on their children are all matters which have to be taken into consideration while exercising the power under section 482, Cr.P.C. If the power has not been exercised under section 482, Cr.P.C. and if the parties are not allowed to compound a particular non-compoundable offence after compromise, it will amount to dragging the couple to the state of their past events mentioned in the complaint, even though they are living happily forgetting their differences and the cruelty that has been caused by one against the other, it will be a futile attempt on the part of the court to continue the proceedings. When in pursuance of the compromise if maintenance proceedings initiated by the wife under section 125, Cr.P.C. have been withdrawn and other compoundable offences are permitted to be withdrawn, it cannot be said that the courts withdrawn, it cannot be said that the courts while exercising inherent power should take too technical view of the matter. Otherwise, it may again lead to creating a storm in the calm waters of domestic felicity between husband and wife. As already observed above, a Hindu marriage like any other marriages is a union between two spouses but when we link to the Hindu society, it is a union between two families. Matrimonial differences some time arise and the matrimonial courts as a measure of public policy are trying for reconciliation between the parties so that the disputes are settled and a happy matrimonial life begins. In exceptional circumstances where it

is proved beyond doubt that the compromise is to the benefit of the couple and by allowing the parties to compound the offences would restore the normalcy between the parties, the courts must come to their rescue exercising the power under section 482, Cr.P.C. ends of justice require while exercising inherent power under section 482, Cr.P.C. that the courts must rise to the occasion of creating a healthy atmosphere between the couple. When the wife and husband want to forget their past misdeeds or differences and when they want to live together and a pursuance of their compromise all the matrimonial cases are settled, it is a futile attempt on the part of the courts to still continue the non-compoundable offence. When it is proved that the compromise is effected voluntarily and they are living peacefully forgetting their past events in the case or re-union or in the case of divorce they are at liberty to live separately, in either way we feel that it is the duty of the court not to disturb the calm atmosphere that has been created in their matrimonial life by not exercising the power under section 482, Cr.P.C. on the ground that the offence is non-compoundable. In exceptional circumstances like the one on hand, the High Court has got the power to exercise the power vested in it under section 482, Cr.P.C. and permit the parties in matrimonial cases to compound the offence or direct the Magistrates to make an enquiry if enquiry is required and permit them to compound the non-compoundable offence.

12. Another line of approach on the subject is that the parties are not allowed to compound a non-compoundable offence, the other course open to the parties is to resile from their previous statements by giving false evidence in court. That means, it amounts to encouraging perjury. The court is not expected to allow the parties to give false statements on oath merely on the ground that the offence is a non-compoundable offences. The decision rendered in exceptional cases under exceptional circumstances cannot be used as a matter of course in all cases. At certain times the allegations made by either of the couple in the complaint may be so serious and even after their compromise if they are allowed to give evidence regarding those facts in court it will create misunderstandings between the couple even after their re-union and it will again create a storm in the calm waters of domestic felicity. If the parties resile from their previous statements it will amount to perjury and if the court has not taken any steps for prosecution of those witnesses who are guilty of perjury it will create an impression in the minds of the

like-minded people that in the event of their giving false evidence in court no action will be taken. The object of criminal law is to punish the person who is found guilty of the offence which has been alleged against him. So the object of imposing a particular sentence is not only punishing an erring accused but it should act as a lesson to the other like-minded persons. In matrimonial cases if the parties are made to give evidence in court even after the compromise, making known their past events to one and all in the court, either of the couple may take it as an insult to their career and may resile from the compromise and consequently the compromise may fail. The proceedings initiated by the wife under section 498A, I.P.C. in particular are legal in the beginning but by virtue of the process of compromise during the course of investigation or trial the further continuation of the proceedings if allowed would be prejudicial to the interests of both the parties and the court must come to their rescue exercising the inherent powers vested in it in the interest of justice and in the interest of future life of the couple. As already under the Hindu Marriage Act re-conciliation is provided for their settlement. We feel that in exceptional cases if the High Court is satisfied in matrimonial cases the parties can be permitted to compound a non-compoundable offence like the one under section 498A I.P.C. if it is proved to be in their interest. It must be remembered the object of introducing Chapter XX-A in the Penal Code. The Legislature has introduced this special chapter bringing a new Section 498A considering the plight of women in the society at the hands of their husband and in-laws. However, when under the Hindu Marriage Act reconciliation proceedings are there in spite of serious allegations, we feel that in case of genuine compromise effected between the parties (husband and wife) and if an application has been filed voluntarily by the two parties and if the court satisfies that any special circumstances exist warranting granting of permission to compound a non-compoundable offence and if it is in the interests of both the parties, the High Court under special circumstances exercising the inherent power under section 482, Cr.P.C., may allow the parties to compound such offences. We are not here to lay down a general proposition that the court is competent to permit the parties in all the cases to compound a non-compoundable offence. The law with regard to exercising of the inherent power under section 482 Cr.P.C. is very clear. To prevent abuse of the process of any court or otherwise to secure the ends of

justice the High Court has got inherent power under section 482, Cr.P.C., to pass such order as is necessary in the facts and circumstances of the case.

13. The Legislature thought it fit that the offence under section 498A I.P.C. is non-compoundable so that it may not be an easy job for either of the parties to withdraw the same as and when they like. If it is made compoundable it will be just like the sentence loses its efficacy as a deterrent sentence if it is too lenient. The safe-guard that is provided to the lady when a complaint is filed for the offence under Section 498A I.P.C. cannot be lightly be taken away unless it is satisfied by the High Court in exceptional circumstances to grant permission exercising its inherent power under section 482 Cr.P.C.

14. There is one more decision on the subject decided by the Supreme Court reported in Mahesh Chand v. State of Rajasthan, : 1988 CriLJ121 . In this case the accused were acquitted by the trial court but were convicted by the High Court for the offence under Section 307 of the Indian Penal Code. Thereafter the parties want to have the offence compounded.

While dealing with the above case, the Supreme Court observed as follows (Paras 2, 3 and 4) :-

'The accused were acquitted by the trial court, but they were convicted by the High Court for the offence under section 307 I.P.C. This offence is not compoundable under law. The parties, however, want to treat it a special case, in view of the peculiar circumstances of the case. It is said and indeed not disputed that one of the accused is a lawyer practising in the lower court. There was a counter case arising out of the same transaction. It is said that this case has already been compromised. The decision of this court in Suresh Babu v. State of Andhra Pradesh, (1987) 2 JT 361, has been also referred to in support of the plea for permission to compound the offence.

We gave our anxious consideration to the case and also the plea forward for seeking permission to compound the offence. After examining the nature of the case and the circumstances under which the offence was committed, it may be proper that the trial court shall permit them to compound the offence.

We, therefore, direct the trial Judge to accord permission to compound the offence, after giving an opportunity to the parties and after being satisfied with the compromise agreed upon

Thus, in the above case the Supreme Court in the particular facts and circumstances of that case held that it may be proper that the trial court shall permit the parties to compound the offence and accordingly directed the trial Judge to accord permission to compound the offence under section 307 I.P.C., which is admittedly a non-compoundable offence. Thus the Supreme Court has given the benefit of compounding the offence under section 307 I.P.C. considering the special features of the case. It cannot be said that the anxious consideration given by the Supreme Court which resulted in permitting the parties to compound a non-compoundable offence normally should not be applied as a matter of course in each and every case, wherein special circumstances do not exist. While exercising the inherent powers under section 482 Cr.P.C., the High Court is not expected to direct the Magistrate to permit the parties to compound a non-compoundable offence arising under the Indian Penal Code or any other special Act. Simply because the parties have approached the appellate court after conviction seeking permission to compound a non-compoundable offence, it does not mean that the inherent power of the High Court under section 482 can be exercised. Following the judgment of the Supreme Court in *Mahesh Chand v. State of Rajasthan*, (1989 Cri LJ 121) (supra) the learned single Judge, in *G. Srinivasulu v. S.H.O. Kandukur*, (1992) 1 APLJ 450 directed the Asst. Sessions Judge, Kandukur to accord permission to the revision petitioner to compound the offence under section 307 I.P.C. It was also a case under section 307 I.P.C. against the sole accused. During the trial of the sessions case the accused and P.W. 1, who are no other than the cousins, have entered into a compromise at the instance of the village elders. The learned Judge held :

'In order to enable the de facto-complainant and the accused to live amicably and peacefully and to avoid tension between the two families in future the compromise entered into between the de facto-complainant and the accused should be allowed in spite of the fact that the offence punishable under section 307 I.P.C. is not a compoundable offence.'

It may be remembered that normally the incidents took place between a known persons or brothers or relations or neighbours. If this trend of compounding a non-compoundable offence is allowed in each and every case taking aid of the Supreme Court judgment which was given after giving anxious consideration to the case and under special circumstances, the intention of the Legislature would be defeated. The view expressed by the learned single Judge that because the accused and P.W. 1 are cousins and they are living side by side even prior to and subsequent to the offence is not at all a ground to be taken into consideration after the conviction. We are still of the firm view that in case of non-compoundable offences in general the High Court has no power to permit the parties to compound the same. Sympathy towards the accused shown in special set of circumstances is different from applying the provisions of the Act. Sympathy cannot be a ground for applying the inherent powers vested in the High Court under section 482 Cr.P.C. It should be exercised in exceptional cases only to prevent the abuse of the process of the court or to meet the ends of justice. Sympathy has no place to outweigh the powers given under a particular statute.

15. We may also state legal position relating to the exercise of inherent power by the High Court under section 482 Cr.P.C. The Supreme Court has laid down the following principles in *Madhu Limaye v. State of Maharashtra*, : 1978 CriLJ165 . They are as follows (Para 8) :-

'.... At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably barring a few exceptions :-

- (1) That the power is not to be restored to if there is a specific provision on the Code for the redress of the grievance of the aggrieved party;
- (2) That it should exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.'

In the above decision the Supreme Court has also referred to its earlier decision reported in *R. P. Kapur v. State of Punjab*, : 1960 CriLJ1239 wherein it was held as follows (Para 6) :-

'Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against the accused person may amount to abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground

There is a Division (Full) Bench judgment of this court reported in *Puritipati Jagga Reddy In. Re.*, (1979) 1 Andh LT 56 : (1979 Cri LJ NOC 112) regarding the inherent power to be exercised by the High Court under Section 482 Cr.P.C. It was held as follows :-

'Sub-sections (1) and (3) of Section 395 Cr.P.C. makes it clear that a person can seek remedy by way of a revision either before the High Court or the Sessions Court. Once he has availed himself of that remedy he is precluded from approaching the other forum. This bar is limited to the same person who has already chosen to go either to the High Court or the Sessions Judge seeking a remedy and it does not apply to the other parties or persons. He can however invoke Section 482 and bring to the notice of the High Court, in whatever manner it may be, that there has been abuse of process of the court or that there has been miscarriage of justice. The High Court can take notice of the same and exercise its inherent powers under section 482 Cr.P.C. and Section 397(3) cannot operate as

a bar to such a course. But that shall not be automatically taken notice of by the High Court. It must be scrutinised and examined whether there has been miscarriage of justice in any particular case before it entertains any such petition filed by an unsuccessful party. It is the satisfaction of the court whether the case warrants the exercise of its powers under section 482 which is important.'

The Full Bench of the High Court of Bombay also had an occasion to consider the inherent powers of the High Court under section 561-A of the Criminal Procedure Code, 1898 (old Code), corresponding to Section 482 of the new code, in *State of Bombay v. Nilkanth*, : AIR1954 Bom65 and it was observed as follows (Para 2) :-

'As Section 561-A was enacted to emphasis the fact that the High Court has the widest jurisdiction to pass orders to secure the ends of justice, Section 561-A must give the power to the High Court to entertain applications which are not contemplated by Criminal Procedure Code. Therefore, if the High Court feels that ends of justice require that an order should be made in an application, although the application is not contemplated by the Code, the High Court will entertain the application and make the necessary orders to secure the ends of justice.'

We have to bear in mind the above principles regarding exercise of inherent powers by this court under section 482 Cr.P.C. while granting permission to the parties to compound a non-compoundable offence. As already stated in the proceeding paragraphs of this judgment, in matrimonial cases in exceptional cases alone this power can be exercised by the High Court. We have to keep in mind the intention of the Legislature in introducing Chapter XX-A in the Indian Penal Code before exercising the inherent power vested under section 482 Cr.P.C. taking into account the changed circumstances. The legislature never contemplated a situation like this.

16. In view of our above discussion, we feel that the view expressed by the learned single Judge in *T. Venkatalakshmi v. State of A.P.* (supra) referred to above viz., that the permission sought for to compound the offence under section 498A I.P.C. pursuant to the settlement or compromise and understanding between the spouses can be accorded by the High Court under section 482 Cr.P.C., is not justified to be used as a matter of course in each and every case. We are of the

firm view that in matrimonial cases, that too, in exceptional circumstances where the disputes arose between the wife and husband resulting in filing a complaint and a petition for divorce which ultimately resulted in the form of compromise either for divorce or for re-union, and where some of the sections complained of are compoundable and some non-compoundable, the High Court alone is competent, exercising the inherent power vested in it under section 482 Cr.P.C. to permit the parties to compound a non-compoundable offence along with other compoundable offences, after being satisfied with the compromise entered into between the parties. The Magistrate or the Sessions Judge, who are not having inherent powers, have no power to accord permission to compound a non-compoundable offence. The application for compounding a non-compoundable offence can be filed by either of the parties to the compromise before the High Court.

17. Considering the facts of this case in the light of the above discussion, we see that the compromise in this case has been entered into between the parties for the benefit of their future life and also for the benefit of their children and pursuant to the compromise all the other cases have been withdrawn and other arrangements sought to be made also have been fulfilled in part. In these circumstances, we feel that as an exceptional case permission can be accorded to the parties to compound to non-compoundable offence.

18. The Magistrate concerned is directed to accord permission to the parties to compound the non-compoundable offence. Reference is accordingly answered.

19. Order accordingly.