

Devender Singh Vs. State and anr.

Devender Singh Vs. State and anr.

SooperKanoon Citation : sooperkanoon.com/700755

Court : Delhi

Decided On : May-23-2008

Reported in : 2008(106)DRJ139

Judge : S. Muralidhar, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138; Companies Act - Sections 394 and 394(2); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173, 320, 357, 397, 482 and 561A; Indian Penal Code (IPC) - Sections 34, 47, 120B, 147, 148, 279, 307, 379, 406, 409, 418, 419, 420, 427, 452, 463, 464, 465, 467, 468, 471, 472, 474, 498A and 506; [Constitution of India](#) - Article 136

Appeal No. : Crl. M.C. 1304/2004 and Crl. M.C. 6600-04/2006 and Crl. M.A. No. 11138/2006

Appellant : Devender Singh; J.K. Singh and ors.

Respondent : State and anr.; Cbi and anr.

Advocate for Def. : Pawan Behl, APP. in Crl. M.C. 1304/2004 and Crl. M.C. 6389/2006 and Crl. M.A. No. 10788/2006 and ; Shish Ku

Advocate for Pet/Ap. : Kailash Vasudev, Sr. Adv. and; Sanjay Shandilya, Adv. in Crl. M.C. 1304/2004,;

Disposition : Petition dismissed

Judgement :

S. Muralidhar, J.

Introduction

1.1 These three cases involve a common question of law concerning the scope of the powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 ('Cr PC') to quash the criminal proceedings where the offences involved include that of forgery and use of forged documents as defined under Sections 468 and 471 of the Indian Penal Code ('IPC'). In each of these petitions filed by the accused, the quashing of the proceedings is sought on the basis that their disputes with the complainants have been settled. This plea is opposed by the prosecution on the ground that there is evidence in each of the cases in the form of a report by the Forensic Science Laboratory ('FSL') to prove the offences independent of the evidence of the complaint. It is urged that the powers of this Court under Section 482 Cr PC should not be used to quash the proceedings involving such non- compoundable offences.

1.2 In *Jugal Kishore Sharma v. State* 2008 (1) JCC 754 where a similar question arose, this Court refused to quash the proceedings. The learned Counsel for the Petitioners in these matters attempted to distinguish the said judgment by pointing out that it did not refer to certain decisions of the Supreme Court, this Court and other High Courts. Accordingly, these cases were heard at length over several days and are being disposed of by this common judgment. Before dealing with the contentions of the parties, the relevant facts in each of the cases require to be noticed.

Background Facts

Crl Misc Case No. 1304/2004(*Devender Singh v. State*)

2.1. The facts relevant for this petition are that an FIR No. 376 of 2000 was registered at Police Station Azad Nagar pursuant to a complaint dated 29th May, 2000 by one Mr. K.D. Tandon who was running the business in the name and style

of Krishna Motors at Sanjay Gandhi Transport Nagar, Delhi. Mr. Tandon stated that he got introduced to the Petitioner Mr. Devender Singh @ Babboo during his visit to the Azadpur Mandi for work. The petitioner assured Mr. Tandon that if moneys were invested with him, the petitioner would pay interest well above the normal rate. He also assured Mr. Tandon of the safety of the money by representing that his father and he himself were in the business of financing transporters had their own trucks and enjoying a good reputation. Mr. Tandon was shown post dated cheques issued by certain transport companies as well as invoices and transport documents. On the basis of this assurance, Mr. Tandon and his relatives invested a large sum with the petitioner for which they were issued receipts by the petitioner.

2.2 After Rs. 16 lakhs invested by Mr. Tandon and his relatives was unable to be realized, they realized that they had been cheated. When Mr. Tandon went to the address given in the receipt purportedly issued by one of the transport companies, he found that no such company was in existence. It also transpired that the cheques issued in favor of the complainant by the transport companies were fake since no such companies were in existence. The petitioner had opened accounts in his own name, in the name of his friends, and in the names of the fictitious companies and deposited the moneys collected from the complainants and others. During the course of investigation, an FSL report was obtained which confirmed that the receipts and cheques issued were forged by the petitioner. A large number of investors were thus cheated and accordingly a charge sheet was filed.

2.3 During the pendency of the proceedings, the petitioner settled the disputes with each of the complainants and paid them the amounts pursuant thereto. Enclosed with the petition are the affidavits of each investor or complainant acknowledging receipt of the amount and stating that the complainant is not interested in pursuing the criminal proceedings. A copy of a letter dated 9th September, 2000 written by Mr. Tandon to the police seeking the dropping of the criminal proceedings in FIR No. 376 of 2000 against the petitioner has been produced. The petitioner has also filed an additional affidavit dated 9th October, 2006 giving the details of the settlements between him and the complainants.

Crl Misc Case No. 6389 of 2006 (Rajesh Trivedi v. State)

3.1. The facts relevant for this petition are that a consultancy and advisory service agreement was entered into on 1st August, 1999 between Ashok Kumar Gautam, the complainant/Respondent No. 2 with M/s Darpan Engineering Services, a consultancy firm of the Petitioner/accused Rajesh Trivedi. Two post-dated cheques, No. 131122 in the sum of Rs. 6 lakhs and No. 131124 in the sum of Rs. 7 lakhs, both dated 15th February 2000, issued by the complainant in favor of the accused were given as advance payment pursuant to the agreement.

3.2 Since M/s Darpan Engineering Services rendered no services, it was agreed between the parties that the post-dated cheques would not be encashed. Accordingly, stop payment instructions were given to the Bank of Maharashtra. Telephonically, Mr. Tandon was also informed that he should not present the cheques. It is alleged that Mr. Tandon forged the date on cheque No. 131122 by changing the date from '15.2.2000' to '15.12.2000', by inserting the figure '1' before a figure '2' in the date of the cheque. It is stated that although the cheque was in the name of M/s Darpan Engineers Services and not in the name of M/s Darpan Engineering Services, Mr. Tandon, in connivance with the officials of ABN Amro Bank, Barakhamba Road, New Delhi, presented the said cheque No. 131122 and had the amount credited to the account No. 257608 in the name of M/s Darpan Engineering Services. The very next day Mr. Tandon withdrew the entire amount of Rs. 6 lakhs.

3.3 Mr. Gautam lodged a complaint on 13th March, 2001 which led to the registration of the FIR No. 132 of 2001. This led to the filing of a charge sheet after investigations were completed. The charge sheet indicates that the police seized the original account opening form bearing specimen signatures of the accused and the Cheque No. 131122 both of which were sent to the FSL, Malviya Nagar, New Delhi for expert opinion. The FSL report confirmed that the figure '1' was indeed inserted before the figure '2' to make it appear as it was of the date 15.12.2000.

3.4. During the pendency of the proceedings, Mr. Tandon repaid Mr. Gautam the sum of Rs. 6 lakhs. Mr. Gautam issued a receipt dated 24th March, 2001 to that effect. Mr. Gautam filed an affidavit dated 28th September, 2006 in support of the

present petition stating that he has no objection to the quashing of the FIR. Mr. Gautam also appeared in this Court on 3rd October, 2006 and confirmed the above statement.

Crl Misc Case No. 6600-4 of 2006 (J.K.Singh and Ors. v. State)

4.1 The facts in the third set of petitions are that Mideast Integrated Steels Ltd. ('MISL') approached the Indus Ind Bank Ltd. (earlier Ashok Leyland Finance Ltd.) sometime in March 1996 for availing a lease finance facility to the extent of Rs. 2 crores. MISL was engaged in the construction of a steel plant at Orissa and was also carrying on other businesses as part of the Mesco Group of Companies. The Petitioner No. 1 Mr. Jitender Kumar Singh was its Managing Director and the Petitioners No. 2 and Mrs. Reeta Singh and Mrs. Natasha Singh Sinha were the Directors. Mr. Deepak Singh, the Petitioner No. 4 was the Financial Controller of Petitioner No. 5 MISL.

4.2. The case of the prosecution is that M/s Kesoram Refractories of which the proprietor was Ms/ Kesoram Industries Ltd., located at Kulti Distt. Burdwan, West Bengal had been supplying refractory materials to MISL for their steel plants in Orissa from 6th March 1995 through various invoices. One such invoice dated 12.9.95 was issued to M/s Mideast Steels Ltd., 'to Costs of Refractories' for a value of Rs.2,84,97,092/- under the signatures of Mr. K.R. Haldia, a former Vice President of M/s Kesoram Refractories. A receipt dated 18th December 1995 was issued by Mr. M.P.V. Raghvan, Resident Executive of M/s Kesoram Refractories of Calcutta for sale of refractory materials to MISL in the course of normal business transactions. 4.3 It is stated that the Petitioners and one other co-accused in criminal conspiracy forged the aforementioned invoice and receipt 'by applying white fluid' and replacing the words 'To Costs of Refractories' with 'Air Pre-heaters' and the figure 'Rs.2,84,79,092' with 'Rs. 1,80,79,092'. The receipt dated 18th December 1995 for Rs. 21,76,965 was also forged by applying white fluid; the date was forged to read as 'Jan 31,1996', and the words 'Refractory materials' were forged to read as 'Air Preheaters'. It is stated that on the strength of aforementioned forged documents submitted by MISL to M/s Ashok Leyland Finance Ltd, the latter was induced into sanctioning a lease finance in the sum of

Rs. 1,90,18,501/- after adjusting an amount of Rs. 21,76,954. It is stated that M/s Ashok Leyland Finance Ltd. were made to part with the sum of Rs. 1,68,41,547/- in the name of M/s Kesoram Refractories by Cheque No. 805479 dated 29th March 1996 drawn on Hongkong and Shanghai Banking Corporation Ltd., New Delhi.

4.4 It is stated that this cheque was delivered to an employee of the Mesco Group of Companies and encased on 4th April 1996 by crediting it to a fake current account of 'M/s Kesoram Refractories' at Vijaya Bank, defense Colony, showing its proprietor as Mr. Deepak Singh, accused No. 4 and by giving the fictitious address. The account opening form was filled in by accused No. 5, introduced by accused No. 6, a former General Manager (Finance) of MISL who also had an account in the same Bank. Thereafter on various dates the amounts were withdrawn transferring almost Rs. 76-77 lakhs through cash and demand drafts to the account of MISL or its Group Companies.

4.5 After the charge sheet was filed and the FSL report confirmed the aforementioned forgery, a settlement was purportedly arrived at between MISL and Indus Ind Bank Ltd. by entering into a Memorandum of Understanding ('MOU') whereby the settled amount of Rs. 92,00,000/- was paid by MISL to Indus Ind Bank Ltd. The MOU dated 11th February, 2006 and the receipt for the aforementioned payment have been annexed to the petition. An affidavit has been sworn to by the Authorised Representative of the Indus Ind Bank Ltd. in this Court confirming the payment having been made and stating that the Respondent No. 2 will have no objection to the quashing of the FIR.

4.6 It is pointed out that the repayment took place pursuant to a scheme of arrangement arrived at in the Company Court of this Court. It is submitted that as far as the present case is concerned, there was no complaint as such, since these facts came to be unearthed when the CBI undertook a general investigation into the affairs of the Mesco Group of Companies. A statement was made by Mr. Deepak Kochhar, the General Manager of Indus Ind Bank Ltd. before this Court on 10th October 2006 confirming that Respondent No. 2 did not wish to pursue the criminal proceedings any further. An affidavit of Mr. Kochhar dated 19th October

2006 has been filed to this effect:

That I state that all disputes and claims have been settled between the parties, as stated in detail in the accompanying petition, which may be kindly read as a part of this affidavit as the contents thereof have not been reproduced herein for the sake of brevity.

That I have arrived at the settlement with the Petitioners after due deliberations and without any pressure or force on anyone and it is a fair, free and voluntary settlement.

Submissions of counsel

5.1 On behalf of the Petitioners arguments were advanced by Mr. R.N. Mittal, Mr. Kailash Vasudev and Mr. Rajiv Nayyar, learned Senior Advocates and Mr. Kawal Nain, learned Advocate. Arguments on behalf of the Respondents were advanced by Mr. Pawan Behl, the learned APP for the State and Mr. Ashish Kumar, the learned standing counsel for the CBI.

5.2 On behalf of the Petitioners it was submitted that the power of this Court under Section 482 Cr PC was wide and could be exercised 'to secure the ends of justice.' The wording of the provision indicated that it was not controlled by any other provision in the Cr PC. While the existence of the power was not in doubt, its exercise would depend on the facts and circumstances of each case. Section 482 Cr PC is an enabling provision the width of which ought not to be curtailed, but should be exercised on a case by case basis in the larger public interest. It is submitted that factors such as the likelihood of there being a conviction, or the opposition to the prayer for quashing of the proceedings by the prosecution were not really relevant. Also, the mere existence of an FSL report did not mean that there was sufficient evidence other than that of the complainant to prove the guilt of a person accused of offences under Sections 468 and 471 IPC. An FSL report was only a corroborative piece of evidence that was rebuttable. Even where the offence is of forgery, if the complainant or the prosecution witness deposes before the trial court that no such forgery was committed by the accused, then the mere existence of an FSL report may not result in a conviction. According to counsel for

the petitioners these were the factors that weighed with this Court in Jugal Kishore Sharma while declining to quash the proceedings in that case and therefore that decision required to be reconsidered.

5.3 Counsel for the petitioners have referred to a number of judgments of the High Courts and the Supreme Court which will be discussed hereafter. While in all these cases, proceedings involving non-compoundable offences have been quashed, they can be broadly categorized into cases where the offences under Sections 467, 468 and 471 IPC are involved and those that involve other types of non-compoundable offences. According to the counsel for the petitioners, there are categories of cases where in the larger interest of the society, in order to ensure peace and harmony, powers under Section 482 Cr PC will have been exercised for the ends of justice notwithstanding the fact that offence itself may be non-compoundable. These include family disputes and commercial transactions between private persons not involving any loss to any public finance institutions like banks. Here the courts have suggested adopting a 'common sense' approach. Persisting with the proceedings in such cases will result in wastage of precious judicial time. However, it is submitted that offences having adverse impact on society like murder, rape, peddling of drugs, counterfeiting of currency and offences generally against public policy ought not to be quashed. It is urged that in each of the present cases, the facts are such that the power should be exercised by this Court to quash the criminal proceedings.

5.4 On behalf of the Respondents, it is submitted that the powers under Section 482 Cr PC are not unlimited and have to be sparingly used. There is a statutory scheme of compoundable and non-compoundable offences. The High Court should not by the device of Section 482 Cr PC bring about indirectly a result which would convert the non-compoundable offences into compoundable ones. The offences of forgery and use of the forged documents are serious and Parliament has despite numerous amendments to the IPC persisted with their classification as non-compoundable offences. In the instant cases, the complainant may have settled the dispute with the accused. However, in each of the cases there was scientific evidence in the form of an FSL report which was sufficient to prove the guilt of the accused. In the circumstances, the power under Section 482 Cr PC

ought not to be used to quash the proceedings. The counsel for the prosecution have also referred to judgments of this Court, other High Courts and the Supreme Court in support of their plea. These will also be discussed hereafter.

The scope of the powers of this Court under Section 482 Cr PC

6.1 The scope of the powers of the High Court under Section 482 Cr PC have been explained in several judgments of the Supreme Court and the High Courts. What can or cannot be quashed in proceedings under Section 482 Cr PC is well settled now. A few illustrative decisions may be referred to.

6.2 In *R.P. Kapur v. State of Punjab* : 1960 CriLJ1239 while explaining the scope and ambit of Section 561 A of the Code of Criminal Procedure 1898 [in pari materia with Section 482 Cr PC] the Court said (AIRp.869):

It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. 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.

6.3 Later in *State of Haryana v. Bhajan Lal* : AIR 1992 SC81 the Supreme Court reiterated the settled position and gave illustrative examples of when the power under Section 482 could be exercised. It however struck a note of caution in the following words (SCC, p.379)

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

6.4. Again in *State v. Navjot Sandhu* : (2003)6SCC641 , while examining if a non-appealable order could be interfered with in exercise of the powers under Section

482 Cr PC, the Court sought to emphasise the need for circumspection (SCC, at p.657):

Section 482 of the Criminal Procedure Code starts with the words 'Nothing in this Code'. Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However as is set out in Satya Narayan Sharma case : 2001 CriLJ4640 this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out hereinabove fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.

6.5 There can be no doubt therefore that the scope of the power of the High Court under Section 482 Cr PC is wide enough to pass orders which would subserve the ends of justice. However, it has been repeatedly urged that this power must be exercised sparingly. The question in each case where such powers are invoked is whether on the facts and in the circumstances of the case, such power such be exercised to quash the criminal proceedings.

Quashing of criminal cases involving non-compoundable offences

7.1 In the present cases the common thread of the submission by the accused is that the complainants do not wish to pursue the criminal proceedings since they have settled their disputes with the accused. thereforee, according to them, there is no purpose in continuing the proceedings. The presumption underlying this submission is that the dispute is essentially only between the accused and the complainant. This presumption is questionable since in the criminal justice system as presently ordered, in cases involving cognizable offences like that of forgery and use of forged documents (which is common to all three cases here), there are essentially two parties to the case: the State and the accused. The complainant or the victim figures only as a witness. It is possible to argue that in the context of plea bargaining, recently introduced in the Cr PC for a certain category of offences, a limited role is assigned to the complainant. Otherwise the role of the complainant is in triggering the prosecution and later appearing as its witness. Later, in the event the accused is convicted, the complainant may be compensated in terms of Section 357 Cr PC. The State as a party to the dispute has in the present cases expressed its opposition to the prayer for quashing. thereforee the mere fact that the accused and the complainant have settled their disputes may not by itself be justification to say that the 'parties' to the case have settled their disputes and thereforee the criminal proceedings involving cognizable offences should be dropped.

7.2 The criminal law statutes assign to the State the role of a prosecuting agency. It is an instance of a power coupled with a responsibility. There are checks on that power and it is not as if it is open to the State to close a criminal case involving a cognizable offence that has commenced with the registration of an FIR, on its own at any stage. Such a decision is subject to judicial review as is evident from Section 173. Even where a closure report is filed, the court may still decide to continue with the case. At a later stage where parties have settled their disputes, it is only in a select category of offences that the cases are permitted to come to an end. The Parliament has under Section 320 Cr PC listed out those cases, where on account of such a settlement of disputes the cases may be 'compounded' either with or without the permission of the court. These categories may be expanded by amending the statute. A recent example is Section 138 Negotiable Instruments Act 1881 which has, by an amendment, been made compoundable. thereforee the

intention of the legislature is not to permit the non-compoundable cases to be closed only because the parties have settled their disputes.

7.3 The non-compoundable offences involved in the present case include Section 468 and 471 of the IPC. Section 468 prescribes punishment for the offence of forgery of a document for the purpose of cheating defined under Section 463 of the IPC and the punishment can extend to imprisonment for a period of seven years and is also inclusive of fine. Under Section 471, the use of a forged document would be punishable in the same manner as forgery of a document under Section 465 is punishable. The definition of forgery in terms of Sections 463 and 464 IPC is wide enough to include the making of a false document by altering it dishonestly. Some of the illustrations under Section 464 IPC as well as those under Explanations 1 and 2 thereof are similar to the present three cases. However, that in any event would be the subject matter of trial and no definite opinion can be expressed at this stage. What is relevant however is that these offences feature in Chapter xviii of the IPC titled 'Offences relating to documents and property marks'. The fact that these offences have been separately classified and have been made cognizable indicates the intent of the legislature. Significantly, offences relating to the counterfeiting of bank notes and currency notes are included in this Chapter. The very nature of these offences indicates that the legislature intended to treat them as a separate class. These offences cannot be viewed as offences relating only to individuals but as having an impact on society as well. There are therefore good public policy considerations in retaining these offences as cognizable and non-compoundable. These public policy considerations have to be kept in mind when considering a prayer for quashing of proceedings involving such offences.

Chances of conviction: a relevant consideration

7.4 Over the years the remedy that parties have had recourse to in such contingency is to approach the High Court with a petition under Section 482 Cr PC. The argument has been that since the disputes have been settled, the complainant is unlikely to support the prosecution any longer and therefore it is futile to continue with the proceedings. This is a factor that has weighed with the

Court as is evident from the following cases. In R.P.Kapur, of the three illustrations given by the Supreme Court one was where 'the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge.' Later in State of Karnataka v. L. Muniswamy : 1977 CriLJ1125 , it was explained (SCC, at p. 702):

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

On the facts of the case the Supreme Court found (SCC, p.704):

There is no material on the record on which any tribunal could reasonably convict the respondents for any offence connected with the assault on the complainant. It is undisputed that the respondents were nowhere near the scene of offence at the time of the assault.... In the circumstances, it would be a sheer waste of public time and money to permit the proceedings to continue against the respondents. The High Court was therefore justified in holding that for meeting the ends of justice the proceedings against the respondents ought to be quashed.

7.5 Again in *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* : 1988 CriLJ853 :

The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

7.6 It is therefore not possible to agree with the submission of the learned Counsel for the petitioners that in deciding whether to quash a criminal case, the Court need not consider whether there is evidence that can prove the guilt of the accused. The above decisions indicate to the contrary. It is possible to state as a corollary that the existence of evidence that could independently prove the guilt of the accused, notwithstanding that complainant may not support it, is a factor that should be considered while exercising the power under Section 482 Cr PC.

Cases of offences other than Sections 468 and 471 IPC: Decisions of the Supreme Court

7.7 The expansion of the power under Section 482 Cr PC to quash criminal proceedings involving non-compoundable offence took place in *B.S. Joshi v. State of Haryana* : 2003 CriLJ2028 . There the High Court had declined to exercise its powers under Section 482 Cr PC to quash criminal proceedings involving the offence under Section 498-A IPC notwithstanding the settlement between the accused husband and the complainant wife. After referring to a large number of earlier decisions, the Supreme Court explained why the power to quash the proceedings must be exercised in such cases (SCC, p.682):

There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts.

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.

7.8 The above decision was rendered in the context of matrimonial proceedings as is evident from the highlighted passages. What appears to have weighed with the court is that in such cases with the complainant unlikely to support the prosecution, the offence of cruelty and harassment cannot possibly be independently proved and the continuation of the proceedings would not be in the 'interests of women'. The decision in B.S.Joshi cannot be read as a signal to quash all cases involving non-compoundable offences on the ground that the parties have settled their disputes.

7.9 A further expansion of the power to quash proceedings was recently witnessed in Madan Mohan Abbot v. State of Punjab a decision that has been heavily relied upon by the Petitioners. A reading of the said judgment of the Supreme Court would show that the offences were under Section 406/409/418/379 and 506 read with 34 IPC. It did not involve the offence of forgery. It was in that context that the Court, in para 5, observed that 'the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings

between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused.' It was in the above context that it was stated 'where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favor of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground realities and bereft of the technicalities of the law.' Clearly therefore the 'common sense' approach requires the Court to ask if there is any possibility of the offence being at all proved if the matter goes to trial.

Cases of offences other than Sections 468 and 471 IPC: Decisions of this Court

8. Several judgments and orders of this Court were cited where the power to quash the proceedings under Section 482 has been exercised. A reference is made first to those cases which do not involve offences under Section 468 and 471 IPC. In *Ajay Kumar Gupta v. State* (a decision dated 3rd July 2007 in Criminal M.C. No. 1661 of 2007), the offence was under Section 307 IPC. In *Ramesh Kumar v. State* 2003 (IV) AD (Del) 377, a Full Bench of five judges of this Court followed the decision of the Supreme Court in *B.S.Joshi* and, in a short order, held that the power to quash could be exercised in the context of matrimonial offences. This Court is unable to agree with the petitioners that this decision has a wider application to all other kinds of non-compoundable offences. The reliance on certain observations of the learned Single Judge of this Court in *G. Udayan Dravid v. State* 2007 [1] JCC 127 is misplaced. There the Court was construing a case where the offence was under Section 406 IPC read with 120-B IPC. A factor that weighed with it was that 'the offence under Section 406 IPC is not made out even if all the materials placed on behalf of the prosecution is taken to be true and correct.' It was held in para 21: 'at best, the only offence that can be allegedly made out is one punishable under Section 420 IPC which is a compoundable offence and the Bank is ready and willing to compound the same and has compromised/settled the disputes with the Petitioners'. *D.C. Singham v. State* 2006 (1) JCC 371 and *Tasleem v. State* 2006 (1) JCC 334 involved the offences

under Sections 406/420 or 498-A IPC. The decisions of the Division Bench of this Court in *Deepak Bhardwaj v. State* 2001 (58), DRJ 590 and those of learned Single Judges in *Chain Sukh v. State* 1999 (1) JCC (Delhi) 142 , *Mohd. Tahir v. State of UP* 2004 (2) CRJ 422 and *Daulat Zia v. GNCT of Delhi* : 74(1998)DLT259 , also did not involve the offences under Sections 468 and 471 IPC.

Cases of offences other than Sections 468 and 471 IPC: Decisions of other High Courts

9.1 A five-Judge Bench of the Punjab & Haryana High Court in *Kulwinder Singh v. State of Punjab* held that the powers of the High Court under Section 482 were wide enough to include the powers to quash even a non-compoundable offence. In para 31 of the said judgment it was observed:

31. The power under Section 482 of the Cr PC cannot be a hostage to one class or category of cases. That would be a complete mis construction of the intent of the Legislature, who placed its utmost faith in the inherent power of the High Court to break free the shackle of other provisions of the Code. To give effect to any order under it or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice.

9.2 In the same judgment, the Court approved the guidelines suggested by the learned amicus curiae about the categories of cases where such power could be exercised. These were (para33):

- a. Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.
- b. Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.
- c. Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or

commercial claim.

d. Minor offences as under Section 279 IPC may be permitted to be compounded on the basis of legitimate settlement between the parties. Yet another offence which remains non-compoundable is Section 506(II) IPC, which is punishable with 7 years imprisonment. It is the judicial experience that an offence under Section 506 IPC in most cases is based on the oral declaration with different shades of intention. Another set of offences, which ought to be liberally compounded, are Sections 147 and 148 IPC, more particularly where other offences are compoundable. It may be added here that the State of Madhya Pradesh vide M.P. Act No. 17 of 1999 (Section 3) has made Sections 506(II) IPC, 147 IPC and 148 IPC compoundable offences by amending the schedule under Section 320 Cr.P.C.

e. The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.

f. That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

9.3 Ultimately, the High Court in Kulwinder Singh concluded:

40. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C.,

in order to prevent the abuse of law and to secure the ends of justice.

41. The power under Section 482 of the Cr.P.C. is to be exercised Ex-Debitia Justitia to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavor to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

9.4 It is significant that in the aforementioned judgment, the case with which the Court was concerned was one involving offences under Sections 452/427/148 and 149 IPC, as is evident from para 3 of the judgment. In the illustrative cases mentioned in Kulwinder Singh, not even one involved the offences in the same class as Sections 468 or 471 IPC. It is therefore difficult to hazard a guess if in the facts of the present cases, where there is an FSL report supporting the case of the prosecution and forming part of the charge sheet, that Court would still have quashed the proceedings.

Cases involving offences under Sections 468 and 47: Decisions of the Supreme Court

10.1. The decision in CBI v. Duncans Agro Industries Ltd : 1996 CriLJ3501 has been relied upon by the petitioners to contend that the Supreme Court upheld the decision of the Calcutta High Court to quash a criminal case involving offences under Section 468 and 471 IPC. The facts relevant for this aspect are set out in para 22 of the judgment which reads (SCC, p.605):

22. Coming to the question of offences under Sections 467, 468 and 471 IPC Mr Shanti Bhushan has also submitted that no offence under the aforesaid sections even prima facie, has been committed even on the face value of the allegations in the FIR. Mr Shanti Bhushan has submitted that it is the case of the CBI that since it is stated in the FIR that Shri D.K. Sengupta had signed the memorandum as Chief Manager which post was not occupied by him, an offence of forgery has been committed. It was alleged in the FIR that Mr D.K. Sengupta had issued a memorandum of complete satisfaction of the charge even though there had been no repayment whatsoever. Mr Shanti Bhushan has submitted that such statement is erroneous and cannot be sustained. It has been submitted by Mr Shanti Bhushan that in view of the order of the High Court under Section 394(2) of the Companies Act, the liabilities of the Tobacco Division of DAIL got transferred to the new Company, i.e. New Tobacco Company. There was, thus, a statutory discharge of the liabilities of M/s DAIL and the memorandum of complete satisfaction was properly issued even though there had not been any repayment of the loan by M/s DAIL. Mr Shanti Bhushan has submitted that notice may be taken by the Court of the usual practice of the Bank that when formal document is issued in the name of the Chief Manager, the Officer dealing with the matter, i.e. Asstt. Manager, puts his signature on the document, on behalf of the higher officer. Such signature on a document, on behalf of the higher officer by the lower officer who specifically deals with it is in the usual course of business of the Bank and no element of forgery can be assigned on account of such signature by a junior officer of the Bank.

10.2 Thereafter the Court explained its reasons for concurring with the High Court in paras 28 and 29 thus (SCC, p. 608):

In the facts of the case, it appears to us that long after the completion of civil suits, the further investigation in connection with the complaints may not be expedient. It may be noted that the opinion given by the Senior Manager (Legal) that the credit facility which was given to DAIL for its tobacco division should be transferred to the newly formed Company, namely, New Tobacco Company Limited, it cannot be held to be per se mala fide or illegal in view of the provisions of Section 394 of the Companies Act. That apart, the legal opinion of the said Senior Manager (Legal)

was placed for consideration by the highest administrative body of the Bank i.e. the Board of Directors and the decision was taken by the Board that the credit liability which stood in favor of DAIL should be transferred in favor of the New Tobacco Company Limited. In the aforesaid circumstances, it appears to us that even if the Senior Manager (Legal) or any other officer of the Bank had not acted properly, in view of the fact that the ultimate decision was taken by the Board of Directors, it cannot be reasonably held that some of the officers of the Bank connived and misled the Board. It may be noted that no allegation has been made against the members of the Board.

29. In the facts of the case, it appears to us that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the companies concerned. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating. It is also to be noted that a long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs. Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, we do not think that the said complaints should be pursued any further. In our view, proceeding further with the complaints will not be expedient. In the special facts of the case, it appears to us that the decision of the High Court in quashing the complaints does not warrant any interference under Article 136 of the Constitution. We, therefore, dismiss these appeals.

10.3 The highlighted portions in Duncan Agro reveal the factors that weighed with the Court in concurring with the High Court. These were that the dispute was

essentially of a civil nature, that the offence at the highest was of cheating which was compoundable and that there was delay. In Duncan Agro there was no evidence of an independent nature, like an FSL report, which the prosecution was relying upon to prove the commission of the offence of forgery under Sections 468 and 471 IPC. The prosecution there appears to have based its case on the fact that a Bank official of a lower rank had purportedly signed on behalf of the officer of a higher rank although that he was not authorised to do so. There is no discussion of this aspect by the Supreme Court. Nothing in Duncan Agro can be understood as an approval of the Supreme Court for the quashing of the criminal proceedings for the offences under Sections 468 and 471 IPC especially where there is forensic evidence in support of such offences as is the case here.

11. In Inspector of Police, CBI v. B. Rajagopal and Ors. JR 2002 (2) SC 331, in a short order the Supreme Court has explained that merely because moneys are repaid to the public financial institutions, it cannot result in the proceedings being quashed. It was sought to be urged that in B. Rajagopal the trial had almost reached the penultimate stage when the High Court had stepped in to quash the proceedings and that was perhaps the reason why the Supreme Court did not approve of the quashing on the ground that a compromise had been arrived at between the bank officials and the accused and the disputed amount had been paid. It is submitted that in the present case that it is still at the stage of filing of the charge sheet and, therefore, the proceedings should be quashed. This Court is unable to agree. As is evident from the order, the payment of the amount by the accused was held not to constitute sufficient ground for quashing the criminal proceedings. The stage of the proceedings was not the relevant factor.

12.1 In Jagdish Chanana v. State of Haryana 2008 (4) SCALE 411 the Supreme Court quashed proceedings involving offences including those under Sections 468 and 471 IPC. The short order reads:

This appeal is directed against the order dated 24th July 2006 rejecting the prayer for quashing of FIR No. 83 dated 12th March 2005 P.S. City Sonapat registered under Sections 419, 420, 465, 468, 469, 471, 472, 474 read with Section 34 of the IPC. During the pendency of these proceedings in this Court, CrI. Misc. Petition

No. 42/2008 has been filed putting on record a compromise deed dated 30th April 2007. The fact that a compromise has indeed been recorded is admitted by all sides and in terms of the compromise the disputes which are purely personal in nature and arise out of commercial transactions, have been settled in terms of the compromise with one of the terms of the compromise being that proceedings pending in court may be withdrawn or compromised or quashed, as the case may be. In the light of the compromise, it is unlikely that the prosecution will succeed in the matter. We also see that the dispute is a purely personal one and no public policy is involved in the transactions that had been entered into between the parties. To continue with the proceedings, therefore, would be a futile exercise. We accordingly allow the appeal and quash FIR No. 83 dated 12th March 2005 P.S. City Sonapat and all consequent proceedings.

12.2 What appears to have weighed with the Court in the above case was the fact that it was 'unlikely that the prosecution will succeed in the matter.' These decisions do not constitute a binding precedent for the proposition that in cases involving the offences under Sections 468 and 471 IPC, notwithstanding the possibility of there being evidence available to the prosecution to support a conviction, the cases should be quashed if there is a settlement arrived at between the complainant and the accused.

Cases involving offences under Sections 468 and 47: Decisions of this Court

13.1 There are three decisions of the Division Bench of this Court where proceedings involving offences under Sections 468 and 471 IPC have been quashed. In *Zile Singh v. State* 2001 (2) JCC (Del) 54, in para 6, it was found that 'so far as the offence under Sections 468/ 471 and 120B IPC are concerned, the statements of the complainant and his brother, Respondent No. 3 make it clear that there was the case of forgery or fabrication of documents. The disputes were simply that deprivation of the complainant's share in the ancestral property which have since been settled.' In *B.K. Sondhi v. State* 2001 (1) JCC (Del) 73, the objection of the State to the quashing was recorded. It was overruled on the ground that 'the allegations of forgery have prima facie not (been) made out because the case of the petitioner throughout had been that he had never sold the

property and that he never executed any document and in particular the agreement to sell.' In *Harnam Kaur v. State* 2002 (1) JCC 149, in para 4, it was noted that the 'central point is whether the ingredients of Section 420 IPC had been made out or not.' There was no discussion about the offences under Sections 468 or 471 IPC. None of the three decisions referred to can therefore be treated as a binding precedent on the facts of the present cases.

13.2 There are a number of decisions of learned Single Judges of this Court where proceedings involving offences under Sections 468, 471 read with 120-B IPC have been quashed. In *Ajay Kumar v. State* 2006 (2) JCC 1073, the relevant portion of the order reads:

5. In the instant case respondent No. 2 is also a private limited company and it was not a public transaction. The dispute related to money transaction which was commercial in nature. It is the case of the petitioners as well as respondent No. 2 that the criminal proceedings were initiated due to misunderstanding and the machinery of criminal law invoked to resolve the matters of a commercial nature. It is categorically stated by the petitioner that there was no false documents created by the petitioner. Respondent No. 2 also thinks that trial, if carried out, may unnecessarily prolong and consume public time.

It is not clear from the above decision whether there was an FSL report that supported the case of the prosecution.

13.3 Reliance was also placed on an order dated 12th July, 2006 in Criminal Misc. Case No. 3627-28/2006. The said order is a short one reads as under:

It is pointed out that the matter is between three real sisters and due to some misunderstanding between the parties FIR No. 38/2003 registered at Police Station R.K. Puram under Section 420/467/468/471/120B/34 IPC was filed. However, better sense prevailed, the parties compromised the matter. Compromise was also recorded in civil Suit No. 1547/2005 and suit was also disposed of by this Court in terms of the said compromise vide order dated May 10, 2006. It was also recorded in the settlement that parties would take appropriate steps in getting the present FIR quashed. It is further pointed out that there was

another suit filed being CS (OS) No. 565/2002 which was also compromised on 14.2.2006 on the same terms. Having regard to the fact that dispute was between the sisters and same is amicable (sic) settled. I am of the view that no useful purpose would be served in continuing with the said FIR insofar as petitioners are concerned. I may note that learned Counsel for the State has argued that FIR lodged is under Section 420/467/468/120-B/34 and, therefore, in a matter like this, the FIR should not be quashed. However, in view of the facts noted above, I am not inclined to accept the submission of learned Counsel for the State. Accordingly, FIR No. 38/2003 registered at Police Station R.K. Puram under Section 420/467/468/471/120B/34 IPC and the proceedings thereon are hereby quashed qua the petitioners.

13.4 It was urged by Mr. Mittal, the learned senior counsel for the Petitioners that if the original file of the said case is requisitioned, it would reveal that there was an FSL report which supports the case of the prosecution. However, this Court is not inclined to follow that course since the order itself does not discuss any such FSL report and it will not be safe to presume that the decision would have been the same had the court discussed the FSL report.

13.5 In the order dated 15th December, 2006 in Criminal M.C. No. 4488-90 of 2006 (Bhagwan Singh v. State), where the dispute was between three sisters and the compromise had already been recorded in the civil proceedings. This Court felt that no useful purpose would be served in keeping the criminal proceedings pending. In *Neelu Gupta v. State* 2007 (3) JCC 1938 and *Sanjay Goel v. State* 2006 (2) JCC 1127 the proceedings were quashed on the basis that a settlement had been reached between the accused and the complainant. Neither of these orders adverts to there being any independent forensic evidence available to the prosecution.

13.6 In *R.P. Gulati v. State* 2003 (73) JCC 1484, the factor which appears to have weighed with the Court was that there was an inordinate delay of over two decades and, therefore, the proceedings should be quashed. In the order dated 12th September, 2006 in Criminal M.C. No. 6162-66/2005 the Court noted that the transaction was in the nature of a corporate deposit and 'the only allegation

concerning the fraud was that the address given by the Petitioner was wrong.'

14. A different note was struck in *Rashmi Aggarwal v. CBI* : 122(2005)DLT62 . There a learned Single Judge of this Court declined to quash the proceedings where the offences were under Sections 468 and 471 IPC. It was a case of embezzlement of public funds by means of fraud and forgery. This Court held that if the FIR were to be quashed on the ground of a compromise 'it will be an open invitation for people to conspire to cheat with immunity.'

15. What this large body of orders shows is that the decision to quash proceedings involving the offences under Sections 468 and 471 IPC will ultimately turn on the facts of each case. There may be cases where there is no evidence available to support the case of the prosecution other than that of the complainant. In such event since there is no other evidence it can be safely inferred that the prosecution will be unable to prove the offence of forgery. For the present purpose it is sufficient to note that these decisions do not constitute a precedent for the proposition that in the event of a settlement in a case involving non-compoundable offences like Sections 468 and 471 IPC, quashing should follow. Obviously, in each of these orders, the Court has based its decision on the facts and circumstances of the case. In fact, even, this Court has, in certain circumstances, quashed the proceedings where there has been no opposition by the State and no evidence in the form of an FSL report is available. However, in none of the decisions noticed the Court was asked to cases deal with a situation as in the present cases where there is an FSL report coupled with the fact that there is vehement opposition by the State to the quashing of the proceedings in the case and a settlement arrived at between the accused and the complainant.

16. It was urged that the offence under Sections 468 IPC is forgery for the purpose of cheating and if the offence of cheating under Section 420 IPC is compoundable, then the case under Sections 468 IPC obviously cannot survive. The cases on hand involve not only the offence of cheating but the offences under Sections 468 and 471 IPC as well. The power under Section 320 Cr PC is an enabling one. There is no compulsion in such cases for the Court to compound the offences. It may well refuse to exercise the discretion to permit compounding where it finds

that the offence is of cheating coupled with forgery.

17. The counsel for the petitioners urged that these cases should be referred to a larger Bench for a final decision since there are conflicting views expressed by different Benches. This Court is unable to agree that there is any conflicting view expressed. As far as the existence of the power under Section 482 Cr PC is concerned, the position has been settled by the Supreme Court. It is the exercise of the power in particular instances that calls for examination of the facts of each case to determine if interference is warranted. There may be a difference in the approach of different Benches. It cannot be said that since on the facts of one particular case, the Court has, notwithstanding the offences being under Sections 468 and 471 IPC quashed the proceedings, it must do so in every other case where such offences are involved. That is not the proposition of law that emerges from the numerous orders and judgments referred to hereinbefore. thereforee, it cannot also be said that where in one case, the Court quashes the proceedings and in another it does not, there is a conflict of opinion. This Court is unable to discern in particular a general principle from the aforementioned numerous judgments that in cases involving offences under Sections 468 and 471 IPC, where there is a compromise between the accused and the complainant, the High Court has to necessarily quash the proceedings in exercise of its powers under Section 482 Cr PC notwithstanding that there is opposition by the prosecution and, as in these cases, there is an FSL report supporting the case of the prosecution for the offence of forgery.

18. The question really is where does one draw the line when it comes to quashing cases involving non-compoundable offences. Despite the unanimity in the decisions that a case involving the offence of rape ought not to be quashed under Section 482 Cr PC, this Court is very often approached by accused with petitions under Section 482 for quashing of cases involving such offence on the ground that the victim and the accused are happily married. In fact the victim joins the accused as a co-petitioner in such cases. Can it be said that for peace and harmony in society such cases must be quashed? Is that then the 'common sense' approach? These are uncomfortable but relevant questions. How far can the court go along with the 'common sense' plea which if taken to its logical end might well include all

kinds of offences. One of the purposes for prescribing punishments for crimes is that it serves to deter specifically the accused involved and generally other potential accused from committing similar crimes. By quashing cases like the present, this purpose may be defeated. Also, by widening the scope in this manner, much will depend on the individual outlook of judges as to when to exercise the power to quash. That in turn makes such decisions vulnerable to challenge on the ground of arbitrariness. This Court while exercising its powers under Section 482 is also required to account for the public policy compulsions involved in continuing to treat the offences under Sections 468 and 471 IPC as non-compoundable. In the mass of judicial orders where the power under Section 482 Cr PC has been exercised to quash proceedings involving non-compoundable offences, the principle on which to base such decision remains elusive.

19. The decision in Navjyot Sandhu reminds us that the power under Section 482 Cr PC cannot be exercised where there is a specific statutory bar. This is relevant in the context of the statutory categorization of compoundable and non-compoundable cases. In quashing cases involving non-compoundable offences this Court is in reality creating a sub-category not intended by the Parliament. Recently an entire chapter on plea bargaining has been inserted in the Cr PC. It is available only in cases punishable with seven years imprisonment and less. If the High Court were to exercise its powers under Section 482 Cr PC to order acceptance of a plea bargain in a case punishable with more than seven years' imprisonment, or pass an order that brings about that result, that would be contrary to the legislative intent.

20. The ultimate question in each of these cases is whether in the facts and circumstances, the proceedings should be quashed or not. To recapitulate, one of the cases involves creating false receipts in the names of fictitious transport companies and getting cheques issued by such fictitious entities, the second involves tampering with the date of the cheque and the third involves forging receipts and invoices by using white fluid. These are cases involving cognizable offences. The dispute may be characterised as a 'private' one but it cannot be said that the offence is one that does not concern the society. One of the cases involves a 'public financial institution.' In each there is an FSL report being relied

upon by the prosecution in support of its plea that the offences can be proved irrespective of the evidence of the complainant who may no longer support the prosecution. In one of the cases, the accused has `settled' the dispute with several persons apart from the complainant. Quashing such a case will defeat the purpose of the probable conviction and punishment acting as a deterrent either specifically or generally. Finally, this Court is unable to overlook the fact that the categorization of certain kinds of offences relating to 'Documents and Property Marks' separately in Chapter xviii and their classification as cognizable and non-compoundable is informed by public policy as acknowledged by the legislature.

21. It was submitted by counsel for the petitioners that the evidence that emerges during the trial may well falsify the FSL report; or it may show that the accused was in any event not the person who committed the forgery. That may well be, but equally, it may not. It is not possible to anticipate at this stage which way the trial will go. The question at this stage is whether it can be said that going to trial in these cases is a waste of time and an exercise in futility. In the considered view of this Court it is not possible to come to such a conclusion at this stage in any of the three cases.

22. This Court is thereforee unable to accept the plea in each of these cases for quashing of the proceedings on the basis of the settlement arrived at between the accused and the complainant. It is clarified that any observation made hereinabove touching upon the merits of the cases is not intended to influence the decision to be arrived at by any other court at any stage of the proceedings hereafter.

23. The petitions are accordingly dismissed and the interim orders stand vacated. The applications are also dismissed.