

78. Compounding as codified in Section 320 of the Code has a historical background. In common law compounding was considered a misdemeanour. In *Kenny's Outlines of Criminal Law* (19th Edn., 1966) the concept of compounding has been traced as follows: (p. 407, para 422)

"422. Mercy should be shown, not sold.—It is a misdemeanour at common law to 'compound' a felony (and perhaps also to compound a misdemeanour); i.e. to bargain, for value, to abstain from prosecuting the offender who has committed a crime. You commit this offence if you promise a thief not to prosecute him if only he will return the goods he stole from you; but you may lawfully take them back if you make no such promise. You may show mercy, but must not sell mercy. This offence of compounding is committed by the bare act of agreement; even though the compounder afterwards breaks his agreement and prosecutes the criminal. And inasmuch as the law permits not merely the person injured by a crime, but also all other members of the community, to prosecute, it is criminal for anyone to make such a composition; even though he suffered no injury and indeed has no concern with the crime."

(emphasis in original)

79. *Russell on Crime* (12th Edn.) also describes:

"Agreements not to prosecute or to stifle a prosecution for a criminal offence are in certain cases criminal."

(Ch. 22 — Compounding Offences, p. 339.)

80. Later on compounding was permitted in certain categories of cases where the rights of the public in general are not affected but in all cases such compounding is permissible with the consent of the injured party.

81. In our country also when the Criminal Procedure Code, 1861 was enacted it was silent about the compounding of offence. Subsequently, when the next Code of 1872 was introduced it mentioned about compounding in Section 188 by providing the mode of compounding. However, it did not contain any provision declaring what offences were compoundable. The decision as to what offences were compoundable was governed by reference to the exception to Section 214 of the Penal Code. The subsequent Code of 1898 provided Section 345 indicating the offences which were compoundable but the said section was only made applicable to compounding of offences defined and permissible under the Penal code. The present Code, which repealed the 1898 Code, contains Section 320 containing comprehensive provisions for compounding.

82. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of Section 147 in the NI Act, the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the NI Act, in that case

the compounding of offence under the NI Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under the NI Act. Therefore, Section 147 of the NI Act must be reasonably construed to mean that as a result of the said section the offences under the NI Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of the NI Act."