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**Damodar S. Prabhu v. Sayed Babalal H.**, (2010) 5 SCC 663 is an important judgment of three Hon'ble judges of this Court. This judgment dealt, in particular, with the compounding provision contained in Section 147 of the Negotiable Instruments Act. Setting out the provision, the Court held:

"**10.** At present, we are of course concerned with Section 147 of the Act, which reads as follows:

"147. *Offences to be compoundable*.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

At this point, it would be apt to clarify that in view of the non obstante clause, the compounding of offences under the Negotiable Instruments Act, 1881 is controlled by Section 147 and the scheme contemplated by Section 320 of the Code of Criminal Procedure (hereinafter "CrPC") will not be applicable in the strict sense since the latter is meant for the specified offences under the Penal Code, 1860.

**11.** So far as CrPC is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the court, while sub-section (2) of the said Section specifies the offences which are compoundable with the leave of the court.

**12.** Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (9) of Section 320 CrPC which states that "No offence shall be compounded except as provided by this Section". A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) CrPC, especially keeping in mind that Section 147 carries a non obstante clause."

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"**15.** The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in a recent decision of this Court, reported as *K.M. Ibrahim* v. *K.P. Mohammed* [(2010) 1 SCC 798 : (2010) 1 SCC (Cri) 921 : (2009) 14 Scale 262] wherein Kabir, J. has noted (at SCC p. 802, paras 13-14):

"*13*. As far as the non obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. …

*14*. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the appellate forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution."

**16.** It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from: K.N.C. Pillai, *R.V. Kelkar's Criminal Procedure*, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p. 444]:

"17.2. *Compounding of offences*.—A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the court."

**17.** In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from: Arun Mohan, *Some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act—Tackling an avalanche of cases* (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p. 5]:

"… Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

**18.** It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. …" (emphasis supplied)

Tags: NIA S. 138 - Compounding