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Compounding of Offence u/s 138/147 of N.I. Act and the Principle of Prayaschitta

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The Hon'ble Supreme Court recently stated that Section 138 N.I. Act proceedings, which concern the dishonour of cheques[1], is a "civil sheep" in a "criminal wolf's clothing." The Court realised the quasi-criminal nature of the offence, interpreting the legislature's intent behind the provisions.[2]

Indian Courts have successively delivered dictums promoting settlement between the victim/complainant and the accused. In the Damodar S. Prabhu case, the Supreme Court allowed the application for the compounding of offence while promulgating guidelines to promote early-stage settlement through compounding. In this case, the Supreme Court guidelines introduced a progressive rate of costs imposed by the Court regarding the stage at which Parties opt for compounding.[3]

However, the controversy of compounding offences under Section 138/147 of N.I. Act got murkier with contradicting judgements delivered by the Apex Court. In J.I.K. Industries case (2012), the Supreme Court stated that the consent of complainant could not be wished away[4] while in Meters and Instruments, the Supreme Court distinguishing from the judicial position in J.I.K. Industries stated that "the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused." [5]

While the Supreme Court has delivered contradicting judgements on the compounding of offences u/s 147 of N.I. Act[6], the element of atonement remains. Though one avenue requires atonement in the victims' eyes in the form of their consent, the other allows compounding if the accused duly compensates in the eyes of the Court.

Compounding of Offences

Compounding of offence is essentially a settlement between the Parties, i.e. the victim/complainant and the accused, for a bona fide compensation to drop proceedings against the accused. Compoundable offences are less serious crimes, not constituting crimes against society at large.

The Criminal Procedure Code enables the compounding of certain offences under the Indian Penal Code by providing a method for the same under Section 320 of the Code.[7] However, offences under the N.I. Act are compoundable under Section 147. Section 147 is a non-obstante provision stating, "Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable." Therefore, indicating that the legislature intended a separate structure for compounding offences under the N.I. Act, however, the lack of a detailed method for compounding under the said provision has created confusion for the Courts.

Section 138 of the N.I. Act concerns the 'dishonour of cheques.' The said provision stipulates that dishonour of cheques is criminal, which may be punishable by imprisonment. However, the inclusion of a provision specifying dishonour as a criminal act was done to encourage cheques and increase the credibility of cheque transactions.

Prayaschitta

Prayaschitta is the Sanskrit word for atonement and penance where the one voluntarily accepts, intentional or unintentional, errors and misdeeds to reduce the karmic consequences. The practice of Prayaschitta dates back to the age of Vedas.

In present-day and age, compensation to the victim is akin to Prayaschitta, where one admits their guilt and atones for their wrongs by offering due compensation as their penance. The due compensation to the victim for the compounding of offence can be equated with the principles of Prayaschitta. Especially in cheque dishonour cases where wrong can be corrected through due compensation, Prayaschitta forms an integral part of the accused's discharge.

Section 147 of the N.I. Act allows the compounding of offences under Section 138. However, owing to the nature of the offence and lack of a specified mechanism for compounding explicitly mentioned in the N.I. Act, the Courts have taken contradictory positions on compounding the offence under Section 147 of the Act. The contradiction regarding the requirement of consent for compounding of offence u/s Section 147 of the N.I. Act introduces the question, 'whether the accused has to atone in the eyes of the Court or the victim?'

The J.I.K Industries case (2012)[8]

The issue of consent for compounding of the offence under Section 147 of the N.I. Act came before the consideration of the Apex court in J.I.K. Industries case. The Hon'ble Court analysed whether the non-obstante provision, i.e. Section 147 of the N.I. Act overrides Section 320 of the Criminal Procedure Code. The Court deliberated upon whether the non-obstante provision negates the complainant's consent for the compounding of offence.

The Hon'ble Court in the J.I.K case took a technical approach in deciding whether or not the requirement of consent exists under Section 147. The Court referred to an earlier decision of the Constitution Bench of the Apex Court concerning the nature of non-obstante clauses and reiterated that "when a non-obstante clause is used in such a blanket fashion, the Court has to determine the scope of its use very strictly."

Therefore, the division bench in the J.I.K. case dictated that the non-obstante provision of Section 147 N.I. Act only overrides Section 320(9) of the Criminal Procedure Code[9], thus enabling the compounding of offences punishable under N.I. Act.

The Court stated that the consent of the complainant could not be wished away. Therefore, for the compounding of offence by the accused, the compensation has to be adequate in the accused's eyes. Thus, the accused is required to atone in the accused's eyes for the offence to be compounded.

However, the Supreme Court's later dictum has created confusion among the Indian Courts regarding the compounding of cheque dishonour cases.

The Meters and Instruments case (2018)[10]

In the Meters case (2018), the issue of consent came again before the Supreme Court for deliberation. However, the Supreme Court's division bench took a purposive interpretation on the basis of a holistic reading of the statute. The Court realised that the statute's object was to facilitate smooth business transactions, and the criminal nature was to prevent issuing of fraudulent cheques. The Court stated that the offence's nature is akin to a 'civil wrong', and the same was made compoundable through an amendment.

Therefore, in light of these observations, the Court dictated that the offence under Section 138/147 is compoundable "in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused."

The two judgements provide separate avenues for compounding the offence under Section 147 N.I. Act for the dishonour of cheques. The J.I.K Industries judgment emphasises the consent of the complainant, which is akin to atonement in the complainant's eyes, and the Meters judgment emphasises on due compensation/atonement in the eyes of the Court.

Conclusion

The J.I.K. Industries case (2012) and Meters and Instruments case (2018) were delivered by the bench of the Supreme Court's same strength, and thus the controversy exists. The Meters case duly distinguishes with the J.I.K. Industries case and allow the accused of compounding of offences upon due compensation in the eyes of the Court if the complainant has withheld consent. However, J.I.K. Industries case states that the consent of complainant cannot be 'wished away' and therefore is inalienable. The two benches have taken different approaches for similar facts and circumstances to arrive at different conclusions, while the J.I.K. Industries judgement is a primarily technical and literal interpretation, the Meters judgement delves into the object and nature of the offence/statute.

While the Meters judgement is ultra vires to the J.I.K. judgement as the bench of similar strength is bound by preceding dictums, the Meters case has been relied upon by High Courts in various cases. The J.I.K. Industries emphasise Prayaschitta in the eyes of the complainant, and the Meters judgement allows compounding if the accused duly compensates in the eyes of the Court. However, the element of atonement/Prayaschitta remains in the compounding of offences.

[1] Section 138 of Negotiable Instruments Act 1881

[2] P. Mohanraj and Ors. V. M/s Shah Brothers Ispat Ltd. [LL 2021 SC 120]

[3] Damodar S. Prabhu v. Sayed Babalal H. (2010) 5 SCC 663

[4] J.I.K. Industries Limited v. Amarlal V. Jumani (2012) 3 SCC 255

[5] Meters and Instruments Private Limited v. Kanchan Metha (2018) 1 SCC 560

[6] Section 147 of Negotiable Instruments Act 1881

[7] Section 320, Criminal Procedure Code, 1973

[8] J.I.K. Industries Limited v. Amarlal V. Jumani (2012) 3 SCC 255

[9] Section 320(9), Criminal Procedure Code, 1973

[10] Meters and Instruments Private Limited v. Kanchan Metha (2018) 1 SCC 560

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