

Crl.A. 129/2016:

Bail Slip.

The Appellant/Accused viz.,

- 1 CHITHIRAISELVAN M/A. 32, S/o Kuppusami
- 2 MANIMARAN M/A. 27, S/o Kannan
- 3 RAVINDRAN M/A. 23, S/o Viswalingam
- 4 GUBENDRAN M/A. 23, S/o Gurunathan
- 5 VENTRIKONDAN M/A. 23, S/o Kaliaperumal
- 6 PREMKUMAR M/A. 23, S/o Mohandoss
- 7 BALAMANIKANDAN M/A.20, S/o Ganesan
- 8 DHILLIPANJOE M/A. 18, S/o Rajasekar
- 9 JEYAKUMAR M/A. 21, S/o Subramani
- 10 PRABAKARAN M/A. 25, S/o Chakkarapani
- 11 GOKULRAJ M/A. 26, S/o Kaliamurthy
- 12 V.GOVINDAN M/A.26, S/o Venkatesan
- 13 GOVINDAN M/A. 27, S/o Perumal
- 14 PREMNATH M/A. 27, S/o Thangavel
- 15 SIVAKATHIRAVAN M/A. 23, S/o Chelladurai
- 16 ELLAYARAJA M/A. 27, S/o Kannappan
- 17 ASHOK KUMAR M/A. 23, S/o Sivalingam
- 18 MURUGESAN M/A. 23, S/o Subbaiah
- 19 R.RAJA M/A. 20, S/o Ramalingam

(Accused 3 to 18 and 21 to 23 in S.C. No. 118/2015 clubbed with S.C. No. 119/2015 & S.C. No. 122/2015 on the file of XVII Additional Sessions Judge, Chennai)

were directed to be released on bail as per order of this court dated 17.02.2016 and made in Crl.M.P. 1785/2016 in Crl.A. No. 129/2016 on the file of this court.

Crl.A. 187/2016:

Bail Slip.

The Petitioner/Accused viz.,

1. Barathikannan M/A. 29 years S/o Karuppaiah
 2. Arumugam M/A-27 years S/o Kamaraj
- (Accused 1 & 2 in S.C. No. 396/2014 on the file of XVII Additional Sessions Judge, Chennai)

were directed to be released on bail as per order of this court dated 04.03.2016 and made in Crl.M.P. 2583/2016 in Crl.A. No. 187/2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2018

PRONOUNCED ON : 30.10.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Criminal Appeal Nos.129 & 187 of 2016

Crl.A.No.129 of 2016:

1 CHITHIRAISELVAN
2 MANIMARAN
3 RAVINDRAN
4 GUBENDRAN
5 VENTRIKONDAN
6 PREMKUMAR
7 BALAMANIKANDAN
8 DHILLIPANJOE
9 JEYAKUMAR
10 PRABAKARAN
11 GOKULRAJ
12 V.GOVINDAN
13 GOVINDAN
14 PREMNATH
15 SIVAKATHIRAVAN
16 ELLAYARAJA
17 ASHOK KUMAR
18 MURUGESAN
19 R.RAJA

...Appellants/Accused
A3 to A18, A21 to A23

- Versus-

The State rep. by
The Inspector of Police,
B-2 Esplanade Police Station,
Chennai 600 104.

..Respondent/Complainant

Crl.A.No.187 of 2016:

1. Barathikannan
2. Arumugam

.. Appellants/Accused 1 & 2

- Versus -

The State rep. by
The Inspector of Police,
B2 Esplanade Police Station,
Chennai 600 104.

.. Respondent/Complainant

Prayer in Crl.A.No.129 of 2016:

Criminal Appeal filed under Section 374 of Criminal Procedure Code, call for the records in S.C.Nos.118 & 119 of 2015 & S.C.No.122 of 2015, dated 28.01.2016 on the file of the XVII Additional Sessions Judge, Chennai and set aside the judgement and conviction.

Prayer in Crl.A.No.187 of 2016:

Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records in S.C.No.396 of 2014 on the file of the XVII Additional Sessions Judge, Chennai and set aside the judgement, conviction and sentence.

For Appellants

in Crl.A.No.129/16 : Mr. Gopinath, SC
Assisted by Arasu Ganasen

For Appellants

in Crl.A.No.187/16 : Mr. Ananthanarayanan, SC
Assisted by Mr. Rajkumar Pandian

For Respondent

in both appeals : Mr. P. Shanmuga Rajeswaran
Govt. Advocate (Crl. side)

COMMON JUDGMENT

These Criminal Appeals have been preferred against the judgment and conviction made by the learned XVII Additional Sessions Judge, Chennai in S.C.Nos.118 & 119 of 2015 & S.C.No.122 of 2015, and S.C.No.396 of 2014, dated 28.01.2016.

2. Since the subject matter of both these appeals arise out of the conviction made by the Trial Court in two separate judgements on the same day i.e., on 28.01.2016, in respect of the same occurrence, both these appeals were clubbed together for hearing.

3. At the outset it is to be noticed that Mr. S. Ananthanarayanan and Mr. Gopinath, learned Senior Counsel appearing for the appellants, during the hearing of these

appeals have made submissions that, since there had been a settlement reached between the appellants/accused and the defacto complainants/victims, in both the cases, each of the appellants herein, has filed an affidavit to the effect of seeking the permission of this Court, for compounding the offences between them. Therefore, mainly on that aspect, submissions have been made by the learned respective Senior Counsel appearing for the appellants.

4. To understand the issue, the necessary facts which are required to be noticed, are provided hereunder:

CrI.A.No.129 of 2016:

4.1. According to the prosecution, at the relevant point of time, there exists, ill feeling between two groups of students in Dr.Ambedkar Government Law College, Chennai. One group consists of hostel students and another group students consists of day scholars. Between them, there had been some hatchet for the alleged reason that, the day scholar group, for celebrating 'Devar Jayanthi' on 30.10.2008, is said to have pasted posters in and around the law college, where the name of the college had been shown only as "Government Law College", by omitting the word 'Dr.Ambedkar' as a prefix.

4.2. In view of the alleged omission of the name of Dr.Ambedkar in the alleged posters pasted by the day scholar group, it seems that, the hostel group students questioned them, with the result, on 06.11.2008, there had been a wordy quarrel between the two groups followed by an alleged assault of the day scholar students on the hostel students on 07.11.2008 at the Broadway bus stand, which is nearer to the college.

4.3. Having the aforesaid hatred and motive, the students of both the group gathered in the afternoon on 12.11.2008 at the campus of Dr.Ambedkar Government Law College, Chennai, where there had been an unlawful assembly and a clash between the two groups of students, with the result, three students were injured severely and they were taken to hospital, where they were admitted as inpatients for a month and were treated.

4.4. Pursuant to the said occurrence, cases had been registered on the basis of the complaint given by the defacto complainant, one Ayyadurai, and accordingly, the case had been investigated and charge sheet filed against 41 accused persons, for the alleged offences punishable under Section 147, 148, 307 r/w 149 r/w 109 and 153-A of IPC.

4.5. On receipt of the final report (charge sheet) filed by the prosecution, the VII Metropolitan Magistrate, George Town, Chennai had taken it on file, as a Preliminary Registered Case No.31/15 [PRC]. Since there had been pendency of NBW against A16-one Premnath, the learned Magistrate split up the case against the accused and took the same on file as PRC.No.32 of 2015. During the pendency of PRC.No.32 of 2015, since NBW was pending against some of the accused persons, the learned Magistrate had split up the case against those accused persons and taken the same on file as PRC.No.33 of 2015. Thereafter, on appearance of the accused, the learned VII Metropolitan Magistrate, Chennai, had given copies under Section 207 of Cr.P.C. and on a perusal of the case records and material objects and statements of the witnesses, finding that the offences under Section 307, 506(ii) r/w 447 r/w 149 IPC were exclusively triable by the Court of Sessions, he had committed PRC.Nos.31,32 and 33 of 2015, to the learned Principal Sessions Judge, Chennai.

4.6. The said cases under PRC numbers referred to above were taken on file by the learned Principal Sessions Judge, Chennai, in S.C.No.118 of 2015 [PRC.No.32/15], S.C.No.119 of 2015 [PRC.No.33/15], S.C.No.122 of 2015 [PRC.No.31/15] and the learned Principal Sessions Judge, Chennai made over the sessions cases i.e., S.C.No.118, 119, 122 of 2015, to the XVII Additional Court, Chennai in April 2015. All the three sessions cases referred to above had been tried and ultimately, the learned Sessions Judge had given his judgement and conviction dated 28.01.2016 by which, the learned Sessions Judge had convicted A3 to A18 and A21 to A23 for the offences punishable under Section 148 of IPC and sentenced them to undergo three years simple imprisonment and imposed fine of Rs.5,000/- each, in default to undergo three months simple imprisonment and also the learned Judge found A3 to A18 and A21 to A28 guilty under Section 324 of IPC and sentenced them to undergo three years Simple Imprisonment and imposed fine of Rs.10,000/- each, in default to undergo three months Simple Imprisonment. The accused were directed to undergo sentences concurrently. In respect of other offences i.e., under Sections 307, 109 and 153(A) of IPC, these accused were not found guilty and therefore, for the said offences, the accused were acquitted. Also, except the aforesaid accused i.e., A3 to A18 and A21 to A23, all other accused have been totally acquitted from all charges. The learned Trial Court Judge had directed that, the sentences already undergone by the accused persons be set off against the sentences of imprisonments.

4.7. Aggrieved over the said judgement and conviction made by the learned Sessions Judge, i.e., XVII Additional Sessions Judge, by his judgement and conviction dated 28.01.2016 made in

S.C.No.118 of 2015 coupled with S.C.No.119 of 2015 and S.C.No.122 of 2015, the accused persons preferred the appeal in Crl.Appeal No.129 of 2016.

Crl A.No.187 of 2016:

5. Like that, out of the same occurrence, one Chitirai Selvan, who was A3, in the other case, had given a complaint that, he was sustained injuries, as against two accused persons, namely, one Bharathi Kannan and Arumugam. Therefore, based on the said complaint given by the defacto complainant, who was PW.1 in this case, final report had been filed by the investigating officer before the learned VII Metropolitan Magistrate, George Town, Chennai, against the accused persons for the alleged offences punishable under Sections 326, 307 and 506(ii) of IPC in respect of the first accused and under Sections 341, 324 of IPC in respect of the second accused. On receipt of the final report from the investigating officer, the learned VII Metropolitan Magistrate, George Town, Chennai had taken the report on file as Preliminary Registered Case No.29 of 2011 [PRC]. Thereafter, on appearance of the accused, the learned Magistrate given copies to them under Section 207 of Cr.P.C. and after perusing the case records, the material objects and the statements of the witnesses, had come to the conclusion that, since the offences under Sections 326, 307 and 506(ii) of IPC were exclusively triable by the Court of Sessions, had committed the PRC No.29 of 2011 on 10.11.2014 to the Principal Sessions Judge, Chennai. The Principal Sessions Judge, Chennai had taken the said case on file and given number as S.C.No.396/14 [PRC.No.29/11] on 19.11.2014. The Principal Sessions Judge made over the said S.C.No.396 of 2014 to the XVII Additional Sessions Judge, Chennai for appearance of accused on 19.11.2015. In this case also, after having tried the case, the learned Judge has passed the final judgement and conviction dated 28.01.2016 wherein, both the accused were found guilty under Section 324 of IPC and were sentenced to undergo three years simple imprisonment and imposed a fine of Rs.10,000/- each, in default to undergo six months simple imprisonment. Aggrieved over the said judgement and conviction made by the Trial Judge dated 28.01.2016 in S.C.No.396 of 2014, this appeal i.e., Crl.A.No.187 of 2016 had been filed by these two appellants.

6. Both the appeals arise out of the same occurrence which had taken place on 12.11.2008 afternoon in the campus of Dr.Ambedkar Government Law College, Chennai. Insofar as Crl.A.No.129 of 2016, (hereinafter referred to as "the first case" for the sake of brevity), though there had been totally 41 accused persons, only against 19 persons, as referred to above, the conviction had been made and the remaining accused

persons in the first case were acquitted by the Trial Court. These 19 persons, who are the appellants in the first case, had been convicted for the offences punishable under Section 148 and 324 of IPC. For both offences, three years simple imprisonment has been awarded with a fine of Rs.5,000/- and Rs.10,000/-each respectively, and the sentences were directed to be undergone by the accused persons concurrently.

7. In respect of CrI.A.No.187 of 2016 (hereinafter referred to as "the second case" for the sake of brevity), there were only two accused persons, against whom, though charges had been framed under various provisions of IPC such as 326, 307 and 506 (ii) in respect of first accused and 341 and 324 of IPC in respect of the second accused, the Trial Court, in its judgement, had convicted both the accused persons, in the second case, only for the offence punishable under Section 324 of IPC and sentenced them to undergo three years simple imprisonment and to pay fine of Rs.10,000/- each, in default to undergo six months simple imprisonment.

8. Only with the above said background of the case, learned Senior Counsel appearing for the appellants have made submissions that, the accused persons in the second case are the alleged victims at the hands of the accused persons in the first case and insofar as the accused persons of the first case, one of the accused i.e., A3, Chitirai Selvan was the injured person at the hands of the accused in the second case and the said A3 was the defacto complainant against the accused persons in the second case.

9. Therefore, in that context, the learned Senior Counsel appearing for the appellants further submitted that, in both cases, each of the appellants as well as the defacto complainants have filed separate affidavits showing their intention to compound the offences for which they had been convicted by the Trial Court, as they have already entered into a compromise.

10. In order to appreciate the said submissions made by the learned Senior Counsel appearing for the parties, the averments in the affidavits filed by the defacto complainant or injured/victims in both cases alone are hereby extracted.

11. In Criminal Appeal No.187 of 2016, the defacto complainant was one K.Chithirai Selvan, who is A3 in CrI.A.No.129 of 2016. He has filed an affidavit which reads thus:

"AFFIDAVIT OF K.CHITHIRAI SELVAN

I, K.Chithirai Selvan, S/o M.Kuppusamy,

aged about 31 years, residing at No.23, Aathi Street, Rose Garden, Pattukkottai, Thanjavur District do hereby solemnly affirmed and sincerely state as follows:

1.I am the 1st Appellant in the above appeal and I well aware with the fact of the case.

2.I further submit that I have been convicted for offence u/s.148, 324 IPC out of 41 accused, by the learned XVII Additional Sessions Judge, Chennai , dated 28.01.2016 and convicting for offence under Section 148 IPC and sentence to undergo 3 year Simple Imprisonment and to pay fine of Rs.5,000/- in default 3 month Simple Imprisonment and for the offence u/s 324 IPC and sentence to undergo 3 years Simple Imprisonment and to pay fine of Rs.10,000/- in default 3 month Simple Imprisonment.

3.I further submit I preferred an appeal against judgement of the Trial Court. During pendency of Appeal I have made compromise with the Defacto Complainant/Victim and settled our dispute amicably. In pursuant to that, I have filed compound petition before this Hon'ble Court. I further submit that I am hailing from downtrodden community (SC) and very poor family. Apart from that I am the First Graduate in my family and nobody is there to look out my aged parents. I have enrolled in the Bar Council of TN & Puducherry, E.No.2272/2011. Under this circumstances after the conviction I have been suspended from the practice. Therefore, I am very much suffering to look after my family. I further submit that this is a case in counter and in another case that Crime No.1372/2008 in which two persons were convicted, they preferred appeal in C.A.No.187/2016 which is pending before this Hon'ble Court and they also filed Compound Petition which is pending before this Hon'ble Court and we preferred appeal either to that. No prejudice caused to the Respondent.

Therefore, it is prayed that this Hon'ble Court may be pleased to allow this petition by compounding non-compoundable offence by set aside the judgement passed by the Trial Court and thus render justice."

12. Likewise, Bharathikannan and Arumugam are the accused in Crl.A.No.187 of 2016 and they are victims/injured and defacto complainant in Crl. Appeal No.129 of 2016. In this regard, both the said Bharathikannan and Arumugam have filed the following affidavits:

"AFFIDAVIT OF BHARATHIKANNAN

I, Bharathikannan, Son of Karuppaiah, Hindu aged about 32 years, residing at Vivekanandapuram, Devakottai, Sivagangai District, having now come down to Chennai, do hereby solemnly affirm and state as follows:

1. I State that I was practising advocate in the state of Tamil nadu and mostly in the Hon'ble High Court of Madras. Now, I am suspended.

2.I state that in the year of 2008, I was pursuing 4th year in the Five year integrated law course in the Dr.Ambedkar Government Law College at Parrys corner, Chennai.

3. I state that there was a commotion within the law college campus between Two groups of students and I was only a spectator watching the commotion and we were taken into custody and cases registered against us and we were convicted under Section 324 of IPC and sentence to suffer simple imprisonment for 3 years and also fine of Rs.10,000/- each and in default to undergo Six Months Simple Imprisonment.

4. I state that on the advice of our elders in the family, out seniors in the professions and well-wishers of both of us and common friends, we have compromised the issues between us and practising together in this chartered High Court. Hence, we pray that this Hon'ble Court may be pleased to permit us to compound the offence and acquit us honorably, So that it may not jeopardize our future as practicing advocates.

5. I state that I am innocent and have been falsely implicated in the above cases, however, I solemnly affirm that I will be careful in future and keep away any such incidents as I has learnt a bitter lesson and experience, this Hon'ble Court

may be pleased to compound the offence and acquit me Honorably as to not to jeopardize as a practising lawyer in future.

It is therefore, pray that this Hon'ble Court may be pleased to compound the offence and acquit me Honorably as to not to jeopardize as a practising lawyer in future and pass such order or other orders as this Hon'ble Court may deem it fit and proper under the Circumstances of the above case and thus render justice.

"AFFIDAVIT OF ARUMUGAM

I, Arumugam, Son of Kamaraj, Hindu, Male, aged about 29 years, residing at No.148, Eadapalayam Main Road, Saron Post, Thiruvannamali District, having now come down to Chennai, do hereby solemnly affirm and state as follows:

1. I State that I was practising advocate in the state of Tamil nadu and mostly in the Hon'ble High Court of Madras.

2.I state that in the year of 2008, I was pursuing 3rd year in the Five year integrated law course in the Dr.Ambedkar Government Law College at Parrys corner, Chennai.

3. I state that there was a commotion within the law college campus between Two groups of students and I was only a spectator watching the commotion and we were taken into custody and cases registered against us and we were convicted under Section 324 of IPC and sentence to suffer simple imprisonment for 3 years and also fine of Rs.10,000/- each and in default to undergo Six Months Simple Imprisonment.

4. I state that on the advice of our elders in the family, our seniors in the professions and well-wishers of both of us and common friends, we have compromised the issues between us and was practising together in this chartered High Court. Hence, we pray that this Hon'ble Court may be pleased to permit us to compound the offence and acquit us honorably, So that it may not jeopardize our future as practising advocates.

5. I state that I am innocent and have been falsely implicated in the above cases, however, I solemnly affirm that I will be careful in future and keep away any such incidents as I has learnt a bitter lesson and experience, this Hon'ble Court may be pleased to compound the offence and acquit me Honorably as to not to jeopardize as a practising lawyer in future.

It is therefore, pray that this Hon'ble Court may be pleased to compound the offence and acquit me Honorably as to not to jeopardize as a practising lawyer in future and pass such order or other orders as this Hon'ble Court may deem it fit and proper under the Circumstances of the above case and thus render justice."

13. The said Bharathikannan and Arumugam filed a petition in Crl.M.P.No.4755 of 2018 in Crl.A.No.187 of 2016 with a prayer seeking permission of this Court to compound the offences for which they have been punished by the Trial Court in S.C.No.396 of 2014 against which they filed Crl.A.No.187 of 2016. In support of the said petition, the defacto complainant, Chithirai Selvan has filed the following affidavit which reads thus:

"AFFIDAVIT OF CHITHIRAI SELVAN

I, Chithirai Selvan Son of M.Kuppusamy, Hindu, Male, aged about 32 years, residing at No.23, Athi Street, Rose Garden, Pattukkottai, Tanjore District, having now come down to Chennai, do hereby solemnly affirm and sincerely state as follows:

1. I state that I am practising advocate, in the State of Tamil Nadu and mostly in the Hon'ble High Court of Madras.

2. I state that on 12.11.2008, I was a law college student doing my Five years integrated law course and I was pursuing my studies in the 4th year.

3. I state that there was a commotion in the college campus at Parrys corner and minor misunderstanding between two groups of students was aggravated at the instigation of the Public, which resulted in an unruly scene and few student were injured and I was one of the injured and admitted at the Stanley

Medical College and Hospital. I was dazed and confused and was having pain killers at that time the police took my signatures in blank papers.

4. I state that subsequently, I learnt that I had been arrayed as defacto complainant in the above case by the B2 Esplanate Police Station in Crime No.1372 of 2008. This culminated into a charge sheet in S.C.No.396 of 2014.

5. I state that I learnt that the Hon'ble XVII Additional Sessions Judge, Chennai had convicted one Bharathi Kannan and Arumugam and sentenced them to undergo 3 years simple imprisonment and pay a fine a sum of Rs.10,000/-each and in default to undergo 6 months simple imprisonment.

6 I state that they are also my collegemates and friends then and even now, we are practising advocates.

7. I state that on the advise of our elders in the family, our seniors in the professions and well wishers of both of us and common friends, we have forgive each other and forgot all ill-will and feelings and have became good friends.

8. I state that, I pray that this Hon'ble Court may be pleased to permit the petitioner to compound the offence and graciously bless us for prosperous and peaceful future, in the interest of our career and our future that the compounding of the offence may be permitted, so that it does not jeopardized our career as practising lawyers.

9. I state that we solemnly affirm that we ill not involve any such activities in future and prays that this Hon'ble Court may be pleased to compound the offence and pass such order, other further order or other orders that this compounding will not jeopardize our future career as lawyers.

I therefore, pray that this Hon'ble Court may be pleased to permit us to compound the

offence and pass such order, other further order or other orders that this compounding will not jeopardize our future career as lawyers and pass such order or other orders as this Hon'ble Court may deem it fit and proper under the Circumstances of the above case and thus render justice.

Solemnly affirmed at Chennai

on this the 21st day of March, 2018

and signed his name in my presence.

sd/-

Before me

sd/-

Advocate : Chennai"

14. Likewise, the 19 accused persons, who are the appellants in Crl.A.No.129 of 2016 have filed a miscellaneous petition in Crl.M.P.No.4756 of 2018 in Crl.A.No.129 of 2016 where, they have sought the permission of this Court to compound the offences for which they have been punished by the Trial Court. In support of the said petition, the defacto complainant in that case one Ayyathurai has filed a supporting affidavit which reads thus:

"AFFIDAVIT OF AYYADURAI

I Ayyadurai, Son of Marriyappan, Hindu, Male aged 28 years, residing at No.4/487, West Street, Araichipatti Village, Vanavadali Chathiram, Sangarankovil Taluk, Thirunelveli District, having now come down to Chennai, do hereby solemnly affirm and sincerely state as follows:

I state that I am practicing advocate, in the State of Tamil nadu and mostly in the Hon'ble High Court of Madras.

2. I state that on 12.11.2008, I was a law college student doing my five years integrated law course and I was pursuing my studies in the 2nd year.

3. I state that there was a commotion in the college campus at Parrys corner and minor misunderstanding between Two groups of students

was aggravated at the instigation of the Public, which resulted in an unruly scene and few students were injured and I was one of the injured and admitted at the Rajiv Gandhi Medical College and Hospital. I was dazed and confused and was having pain killers at that time the police took my signatures in blank papers.

4. I state that subsequently, I learnt that I had been arrayed as defacto complainant in the above case by the B2, Esplanade Police Station in Crime No.1371 of 2008. This culminated in to a charge sheet in S.C.Nos.118, 119 & 122 of 2015.

5. I state that I learnt that the Hon'ble XVII Additional Sessions Judge, Chennai had convicted the above stated Appellants and Sentenced them to undergo 3 years simple imprisonment and pay a fine of sum of Rs.5,000/- each and in default to undergo 3 months simple imprisonment for the offence under Section 148 of IPC and undergo 3 years simple imprisonment and pay a fine a sum of Rs.10,000/-each and in default to undergo 3 months simple imprisonment for the offence under Section 324 of IPC. Both the sentences were directed to run concurrently.

6. I state that they are also my collegemates and friends then and even now, we are practising advocates.

7. I state that on the advise of our elders in the family, our seniors in the professions and well wishers of both of us and common friends, we have forgive each other and forgot all ill-will and feelings and have become good friends.

8. I state that, I pray that this Hon'ble Court may be pleased to permit the petitioner to compound the offence and graciously belss us for prosperous and peaceful future, in the interest of our career and our future that the compounding of the offence may be permitted, so that it does not jeopardized out career as practising lawyers.

9. I state that we solemnly affirm that we ill not involve any such activities in future and prays that this Hon'ble Court may be pleased to compound the offence and pass such order, other further order or other orders that this

compounding will not jeopardize our future career as lawyers.

I therefore, pray that this Hon'ble Court may be pleased to permit us to compound the offence and pass such order, other further order or other orders that this compounding will not jeopardize our future career as lawyers and pass such order or other orders as this Hon'ble Court may deem it fit and proper under the Circumstances of the above case and thus render justice.

Solemnly affirmed at Chennai

on this the 21st day of March, 2018

and signed his name in my presence.

sd/-

Before me

sd/-

Advocate : Chennai "

15. Therefore, by filing the aforesaid two Criminal miscellaneous petitions in both cases, the defacto complainants as well as the injured/victim have come forward to compound the offences for which the appellants have been punished by the Trial Court in the said judgements which are assailed in these two appeals.

16. Only in this context, the respective learned Senior Counsel appearing for the appellants in both the cases have made submissions that, the accused in both cases as well as the defacto complainants were collegemates and when they had been pursuing their law course in Dr.Ambedkar Government Law College, Chennai in the year 2008, there had been some misunderstanding between two groups of students with reference to the alleged omission of the name of "Dr.Ambedkar" in the posters alleged to have been printed and pasted by other group of students in connection with the celebration of 'Devar Jayanthi' on 30.10.2008. Learned Senior Counsel would further submit that, therefore, there had been a wordy quarrel and also some minor scuffling between two group of students on 12.11.2008 in the college campus, with the result, pursuant to the complaint made

by the defacto complainants in both the cases, respective cases were filed and ultimately, the Trial Court had convicted these appellants in both cases.

17. Learned Senior Counsel would further submit that, insofar as the first case is concerned, the conviction against each of the appellants has been made for the offences punishable under Section 148 and 324 of IPC and insofar as the second case, the appellants were punished for the offence punishable under Section 324 of IPC.

18. In this context, the learned Senior Counsel appearing for the appellants made submissions that, even though the offences under Sections 148 and 324 of IPC are non-compoundable offences within the meaning of Section 320 of Cr.P.C., Courts have taken the view that, by taking into account the facts and circumstances of the case, such permission can be granted enabling the parties to purchase peace and to lead a respectable and peaceful living for the rest of their life.

19. In support of their contention, the learned Senior Counsel in both the appeals have cited the following decisions:

(i) 2009 SCC Online Punjab & Hariyana 2260 in the matter of Kamaldeep Singh vs. State of Punjab :

(ii) 2011 SCC Online KAR 3917 in the matter of Madarsab and others vs. State of Karnataka:

(iii) Special Leave Petition in Crl.M.P.No.18630/16 in the matter of Unnikrishnan @ Unnikuttan vs. State of Kerala, the judgement of the Honourable Supreme Court dated 01.03.2017.

20. By relying upon the aforesaid decisions, the learned Senior Counsel appearing for the appellants would urge that, though the offences under Sections 148 and 324 of IPC are not compoundable under Section 320 of Cr.P.C., this Court can permit the appellants to compound the offences. The learned Senior Counsel would also submit that, out of all these appellants, except A8, A11, A13, A14, A15 and A18 in the first case, all other accused/appellants in both cases have already enrolled themselves as advocates, however, their practice has been suspended in view of the conviction faced by them in these cases. Therefore, by taking into account, the career of these appellants as they are qualified as lawyers as on date by virtue of their enrolment as lawyers, this Court can grant permission to compound the offences in both cases.

21. I have heard Mr. Shanmuga Rajeswaran, learned Government Advocate appearing for the State also in this regard, who would

submit that, insofar as the compounding of offences, the procedure as contemplated under Section 320 of Cr.P.C. has to be strictly followed and in that case, both the offences i.e., offences punishable under Section 148 as well as 324 of IPC are non-compoundable and therefore, such a permission cannot be granted by this Court to the appellants herein.

22. Before dwell into the plea made by the learned Senior Counsel appearing for the appellants in the teeth of the two Criminal Miscellaneous Petitions, both seeking permission of this Court to compound the offences, the legal position insofar as compounding of offences under Section 320 Cr.P.C. can be gone into.

23. For easy reference, the relevant portion of Section 320 of Cr.P.C. is extracted hereunder:

"320. Compounding of offences.

(1) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:-

.....(Table of cases Omitted)

(2) The offences punishable under the sections of the Indian Penal (45 of 1860) Code specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:

.....(Table of cases Omitted)

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908), of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

24. It is to be noted that, Section 320 Cr.P.C. accepts the parties to compound the offence only in respect of certain offences punishable under various Sections of IPC. Under Section 320(1) of Cr.P.C., only certain offences mentioned in the table given therein can be compounded by the persons, who have been mentioned in column 3 of the said table. Similarly, under Section 320(2) of Cr.P.C. some more offences can be compounded, however, with the permission of the Court. Apart from these offences, no other offence can be compounded under that Section i.e., Section 320 of Cr.P.C. This is evident because, sub section (9) of Section 320 of Cr.P.C. says "no offence shall be compounded except as provided by this Section".

25. In the teeth of the said provisions under Section 320 Cr.P.C. whether non-compoundable offence can be compounded with

the permission of the Court is the question to be answered so that the issue raised herein in these two applications (appeals) can be resolved.

26. In this context, there are series of judgements of the Honourable Apex Court and in order to find out answer to the aforesaid question, let me take up the said decisions in seriatim.

27. In 1990 Suppl. SCC 681 in the matter of Maheshchand and Another vs. State of Rajasthan, the issue which came up for consideration before the Apex Court was, whether an offence under Section 307 of IPC can be compounded. Their Lordships in their order have held as follows:

1. In this special leave petition challenging the validity of the conviction under Section 307 IPC, the parties want to have the offence compounded. They have come to terms. They want this Court to permit them to compound the offence.

2. The accused were acquitted by the trial court, but they were convicted by the High Court for the offence under Section 307 IPC. This offence is not compoundable under law. The parties, however, want to treat it as 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 practicing in the lower court. There was a counter case arising out of the same transaction. It is said that the case has already been compromised. The decision of this Court in Suresh Babu v. State of Andhra Pradesh [(1987) 2 JT (SC) 361], has been also referred to in support of the plea for permission to compound the offence.

3. We gave our anxious consideration to the case and also the plea put 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.

4. 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.

The connected papers filed in this connection before this Court be transmitted to the trial court for the purpose. The parties, if they want, may file additional documents.

5. In the meantime the petitioners be released on bail to the satisfaction of the trial Judge (Additional Sessions Judge, Baran).

6. Special leave petition is accordingly disposed of."

28. The next judgement, which I propose to quote here is 1999 (2) SCC 213 in the matter of Ram Lal and another vs. State of Jammu & Kashmir. In this case, the appellant stood convicted under Section 326 of IPC and was undergoing a sentence of three years. Another appellant in the said case had been convicted for the offence under Section 324 of IPC and was sentenced for imprisonment for two years. When both the appellants made a plea before the Honourable Apex Court to permit them to compound the offences by citing the earlier decision of this Court in Y. Suresh Babu vs. State of Andhra Pradesh reported in JT 1987 (2) SC 361 and Makeshchand vs. State of Rajasthan cited supra, the Honourable Apex Court has taken the following view:

3. We are unable to follow the said decision as a binding precedent. Section 320 which deals with "compounding of offences" provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the court by the persons indicated therein. Only such offences as are included in the said two Tables can be compounded and none else. Sub-section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban in the following terms:

"320. (9) No offence shall be compounded except as provided by this section."

4. It is apparent that when the decision in Mahesh Chand [1990 Supp SCC 681 : 1991 SCC (Cri) 159] was rendered, the attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was the attention of the learned Judges who rendered the decision in Y. Suresh Babu [JT (1987) 2 SC 361] drawn. Hence those were decisions rendered per incuriam. We

hold that an offence which law declares to be non-compoundable even with the permission of the court cannot be compounded at all. The offence under Section 326 IPC is, admittedly, non-compoundable and hence we cannot accede to the request of the learned counsel to permit the same to be compounded.

5. However, considering the fact that the parties have come to a settlement and the victims have no grievance now and considering the further fact that the first appellant has already undergone a period of imprisonment of about six months, a lenient view can be taken and the sentence can be reduced to the period which he has already undergone. We order so and direct the jail authorities to set him at liberty forthwith.

(Emphasis is mine)

29. In the said case, insofar as the second appellant, who had been convicted only under Section 324 of IPC, the Honourable Apex Court had permitted the parties to compound the offence holding as under:

6. Regarding the second appellant, we permit the parties to compound the offence (Section 324 IPC) in view of the joint application filed by the legal representatives of the deceased-complainant and the second appellant (vide his application Crl. MP No. 7648 of 1998). In view of the aforesaid compounding of the offence under Section 324 of IPC, we set aside the conviction and sentence passed on the second appellant and he is acquitted under Section 320(8) of the Code of Criminal Procedure, 1973."

30. It is pertinent to note here that, the offence under Section 324 of IPC was originally under the heading "compoundable offences". However, by virtue of the amendment made in 2005 in the Code of Criminal Procedure (Amendment) Act, 2005, the said offence under Section 324 of IPC had been made as non-compoundable and non-bailable offence. Therefore, the legislative intent was made clear by virtue of the said amendment, thereby, the offence under Section 324 of IPC which was hitherto a compoundable offence had been made a non-compoundable offence. Therefore, in the aforesaid decision, i.e., Ramlal's case, the second appellant since had been

convicted only under Section 324 of IPC, the Court have permitted the parties to compound the said offence as it was the decision taken prior to 2005 amendment. At the same time, the Honourable Apex Court, had declared that, an offence which law declares to be non-compoundable, even with the permission of the Court, cannot be compounded at all.

31. The next decision to be noticed is 2005(1)SCC 343 in Bankat and Another vs. State of Maharashtra. In this case, the punishment awarded against the appellant was under Section 325 and 326 r/w 34 of IPC. On behalf of the appellants in that case, before the Honourable Apex Court, it was contended that, since the parties have settled the dispute, the appellants could have been given permission to compound the offence. On behalf of the appellant, the case of Makesh chand vs. State of Rajasthan was cited, however, on behalf of the prosecution, the decision of Ramlal vs. State of Jammu and Kashmir was cited. After having heard the parties and having gone into the import of Section 320 of Cr.P.C., the Honourable Apex Court in that case has held as follows:

11. In our view, the submission of the learned counsel for the respondent requires to be accepted. For compounding of the offences punishable under IPC, a complete scheme is provided under Section 320 of the Code. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in column 3 of the said table. Further, sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, sub-section (9) specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under IPC could not be compounded.

12. Further, the decision in Ram Pujan case [(1973) 2 SCC 456 : 1973 SCC (Cri) 870] does not advance the contention raised by the appellants. In the said case, the Court held that the major offences for which the accused have been convicted were no doubt non-compoundable, but the fact of compromise can be taken into account in determining the

quantum of sentence. In Ram Lal case[(1999) 2 SCC 213 : 1999 SCC (Cri) 123] the Court referred to the decision of this Court in Y. Suresh Babu v. State of A.P. [(2005) 1 SCC 347 : JT (1987) 2 SC 361] and to the following observations made by the Supreme Court in Mahesh Chand case [1990 Supp SCC 681 : 1991 SCC (Cri) 159] : (SCC p. 682, para 3)

"3. We gave our anxious consideration to the case and also the plea put 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."

and held as under: (SCC p. 214, para 3)

"We are unable to follow the said decision as a binding precedent. Section 320 which deals with 'compounding of offences' provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the court by the persons indicated therein. Only such offences as are included in the said two Tables can be compounded and none else."

13. In the case of Y. Suresh Babu [(2005) 1 SCC 347 : JT (1987) 2 SC 361] the Court has specifically observed that the said case "shall not be treated as a precedent". The aforesaid two decisions are based on facts and in any set of circumstances, they can be treated as per incuriam as pointed attention of the Court to sub-section (9) of Section 320 was not drawn. Hence, the High Court rightly refused to grant permission to compound the offence punishable under Section 326.

14. We reiterate that the course adopted in Y. Suresh Babu [(2005) 1 SCC 347 : JT (1987) 2 SC 361] and Mahesh Chand case [1990 Supp SCC 681 : 1991 SCC (Cri) 159] was not in accordance with law.

15. The above position was elaborately indicated by a three-Judge Bench of this Court

in Surendra Nath Mohanty v. State of Orissa [(1999) 5 SCC 238 : 1999 SCC (Cri) 998] .”
(Emphasis is mine)

32. The case of Y.Suresh Babu vs. State of Andhra Pradesh dated 29.04.1987 has been reported in 2005(1) SCC 347, wherein, the Honourable Apex Court has held as follows:

"1. Special leave granted. Learned counsel for the parties heard on the application made under Section 320 of the Code of Criminal Procedure, 1973 for leave to compound the offence. The appellant has been convicted under Section 326 of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for a period of one year. Although the offence under Section 326 of the Code is non-compoundable, learned counsel for the parties submit that through the intervention of well-wishers the parties who are from the same locality have reconciled their differences to preserve amity and good relations. They pray for leave to compound the offence. The appellant stabbed D. Narsinga Rao, Respondent 2 herein after an altercation near the pan shop owned by him. This was an unfortunate incident and the learned counsel for the appellant submits that his client has a feeling of remorse. Learned counsel appearing for Respondent 2 also joins in the prayer for permission to compound the offence.

2. Taking an overall view of the facts and circumstances, we grant leave as a special case to the parties to compound the offence on condition that the appellant pays Rs 10,000 to Respondent 2 by way of compensation for the physical injury suffered by him. The amount of compensation shall be deposited in the Court of IInd Additional Metropolitan Sessions Judge, Hyderabad within one month from today. If the amount is not deposited within the period allowed, the conviction and sentence recorded by the courts below against the

appellant under Section 326 of the Code shall stand. However, if the amount is deposited within the time allowed, the conviction and sentence of the appellant under Section 326 of the Indian Penal Code shall be set aside. Respondent 2 shall be at liberty to withdraw the said amount unconditionally. The appellant shall in the meanwhile be enlarged on bail by the learned IInd Additional Metropolitan Sessions Judge on such terms as he thinks fit. This case shall not be treated as a precedent."

33. It is to be noted that, therefore, the decision made by the Honourable Apex Court in Y.Suresh Babu's case and Mahesh Chand's case (cited supra) has been declared as per incurium by the Honourable Apex Court in Bankat and another's case that, those decisions were not in accordance with law. Like that, in Ramlal's case cited supra, the Y.Suresh Babu's and Mahesh Chand's case were held to be per incuriam.

34. The next case to be noted is the decision in 2015(11) SCC 137 in the matter of Nandagopalan vs. State of Kerala. In that case, the appellant was convicted under Section 324 and 326 of IPC. When a plea was raised on behalf of the appellant/accused in that case before the High Court seeking to permit him to compound the offence, such permission was not granted on the ground that both the offences under Sections 324 and 326 of IPC were non-compoundable. When the same plea was raised before the Supreme Court, the Honourable Apex Court, by taking into account the earlier decision, has held as follows:

7. Shri Jethmalani submitted that though the offence under Section 326 could not be compounded, the compromise could be taken into account for reducing the sentence. He further submitted that since the weapon used in the present case was not of the nature specified under Sections 324 and 326, the charge could be altered to Sections 323 and 325. Offence under Sections 323 is compoundable and 325 is compoundable with the permission of the court. Shri Jethmalani has drawn the attention of the Court to the judgments in Dasan vs. State of

Kerala and another[1], Mathai vs. State of Kerala[2] and Regina vs. Bibi.

8...to 13.....

14. In Dasan, it was observed :

"7. Section 320 of the Criminal Procedure Code ("the Code") pertains to offences punishable under the Penal Code only. It states which offences can be compounded, by whom they can be compounded and which offences can be compounded only with the permission of the concerned court. Sub-sections 3 to 8 thereof further clarify how Section 320 of the Code operates. Sub-section 9 thereof states that no offence shall be compounded except as provided by this section. The legislative intent is, therefore, clear. Compounding has to be done strictly in accordance with Section 320 of the Code. No deviation from this provision is permissible."

15. In Bankat vs. State of Maharashtra [6], it was observed : "11. In our view, the submission of the learned counsel for the respondent requires to be accepted. For compounding of the offences punishable under IPC, a complete scheme is provided under Section 320 of the Code. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in column 3 of the said table. Further, sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, sub-section (9) specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under IPC could not be compounded.

12. Further, the decision in Ram Pujan case [1973 (2) SCC 456] does not advance the contention raised by the appellants. In the said case, the Court held that the major offences for which the accused have been convicted were no doubt non-compoundable, but the fact of compromise can be taken into

account in [pic]determining the quantum of sentence. In Ram Lal case [1999 (2) SCC 213] the Court referred to the decision of this Court in [Y. Suresh Babu v. State of A.P.](#) [2005 (1) SCC 347] and to the following observations made by the Supreme Court in Mahesh Chand case [(1990) Supp. SCC 681] (SCC p. 682, para 3) :

"3. We gave our anxious consideration to the case and also the plea put 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." and held as under: (SCC p. 214, para 3) "We are unable to follow the said decision as a binding precedent. [Section 320](#) which deals with 'compounding of offences' provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the court by the persons indicated therein. Only such offences as are included in the said two Tables can be compounded and none else."

13. In the case of [Y. Suresh Babu](#) the Court has specifically observed that the said case "shall not be treated as a precedent". The aforesaid two decisions are based on facts and in any set of circumstances, they can be treated as per incuriam as pointed attention of the Court to sub-section (9) of [Section 320](#) was not drawn. Hence, the High Court rightly refused to grant permission to compound the offence punishable under [Section 326](#)."

16. In view of the above, we are inclined to reduce the sentence of imprisonment of the appellant to the period already undergone, while increasing the amount of compensation to Rs.2 lakhs to be paid to the victim within three months, failing which the sentence awarded by the High Court will stand affirmed."

35. In yet another decision reported in 2015(11) SCC 226 in the matter of Moharsingh vs. State of Rajasthan, it was the plea on behalf of the appellant therein, to permit him to compound the offence punishable under Section 307 of IPC. The Honourable Apex Court, however, has held as follows:

"10. The learned counsel for the appellant submitted before us that after the incident, the injured has entered into compromise, and he does not want to prosecute the appellant. In this connection, application for permission to file additional document (Annexures P-12 and P-13) has been moved before us, enclosing panchayatnama dated 5-2-2014, prepared by the villagers. Since the offence punishable under Section 307 IPC is non-compoundable offence, as such, we reject the compromise filed by the appellant. Though the victim also appeared in person before us to corroborate that now he is no more interested to prosecute the appellant, but considering the nature of injuries and the nature of offence, we are not inclined to interfere with the conviction recorded by the trial court against the appellant, and affirmed by the High Court. However, taking note of the above fact, we think it just to reduce the period of sentence of imprisonment to three years without interfering with the sentence of fine. This reduction in sentence shall not be treated precedent for sentencing in respect of offence punishable under Section 307 IPC.

11. Accordingly, conviction is not interfered with but the sentence is reduced to rigorous imprisonment for three years. The appeal stands disposed of. The appellant shall surrender before the court concerned to serve out the remaining unserved part of sentence, as modified by this Court."

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36. At the same time, in some of the cases, the said permissions have been granted even though it was held by the Honourable Apex Court in more than one judgement that in view of sub section 9 of Section 320 of Cr.P.C., only the offences shown in the table mentioned in sub section (1) and sub section (2) of Section 320 alone can be compounded and no other offence.

37. One of such judgements is 2014 (13)SCC 798 in the matter of Padmalayan and Another vs. Sarasan and Another where, exactly the punishment was under Section 324 of IPC. When a plea was raised before the Honourable Apex Court to permit the parties to the lis to compound the offences under Section 320 of Cr.P.C. the Honourable Apex Court has taken the following view:

"1. Leave granted. This appeal is directed against the judgment and order passed by the High Court of Kerala at Ernakulam in Padmalayan v. Sarasan [Padmalayan v. Sarasan, Criminal Revision Petition No. 1831 of 2004, decided on 11-10-2012 (Ker)] , dated 11-10-2012. By the impugned judgment and order [Padmalayan v. Sarasan, Criminal Revision Petition No. 1831 of 2004, decided on 11-10-2012 (Ker)] , the High Court has confirmed the orders passed by the learned Sessions Judge in Criminal Appeal No. 12 of 2011, dated 11-3-2004.

2. On a private complaint filed by the respondents herein for offences under Sections 141, 142, 143, 148, 149, 307, 324, 37 and 34 of the Penal Code, 1860 ("IPC", for short), the learned Magistrate had convicted the appellants herein and had sentenced them to undergo simple imprisonment for a period of two years along with fine under Section 324 IPC. Being aggrieved by the said order, the accused persons had approached the learned Sessions Judge. The learned Judge, while confirming the conviction of the accused, has modified the sentence to one year's simple imprisonment and for payment of Rs 10,000 as fine on each of the appellants, and, in default, to undergo further simple imprisonment for six months. Aggrieved by the said order, the accused persons had filed a criminal revision petition before the High Court. The High Court, after hearing the parties to the lis, has dismissed the petition

filed by the accused persons. That is how the accused persons are before us in this appeal.

3. The learned counsel, at the time of hearing of the appeal, would submit that the parties to the lis have compounded the offence under Section 320 of the Code of Criminal Procedure, 1973 ("the Code", for short). To this effect, an appropriate affidavit has also been filed before this Court.

4. The learned counsel appearing for the respondents submits that he has no objection if the accused persons are permitted to compound the offence under Section 320 of the Code.

5. In view of the understanding between the parties, we permit the accused persons to compound the offences as provided under Section 320 of the Code. Accordingly, we set aside the impugned order [Padmalayan v. Sarasan, Criminal Revision Petition No. 1831 of 2004, decided on 11-10-2012 (Ker)] and acquit the appellants of the charges alleged against them.

6. For wasting the time of the courts below and this Court, we impose a costs of Rs 15,000 each on the accused person/(s) for being deposited in the Supreme Court Employees' Mutual Welfare Fund within four weeks' time from today. If such deposit is not made within the time granted, the appeal stands dismissed, without further reference to the Court. Ordered accordingly."

38. Further, in the following two cases, the Honourable Apex Court has taken the view that if the offence, for which, one is punished is a non-compoundable one, however, based on the circumstances of the case, the Court can convert the offence under appropriate punitive provision of IPC and if such altered punitive provision of IPC is compoundable, then such permission can be given to such parties to compound the offence under Section 320 of Cr.P.C. This course of action had been adopted by the Honourable Apex Court in 2014 (12) SCC 666 in the matter of Dasan vs. State of Kerala and another. In that case, punishment was given to the appellant under Section 326 of IPC which is a non-compoundable offence. Therefore, permission was sought from the Court to compound the offence punishable under Section 326 of IPC. However, the Honourable Apex Court by

taking into account the factual matrix of the case, had come to the conclusion that, the charges against the appellants for causing grievous hurt voluntarily has to be fitted in only under Section 325 of IPC which is a compoundable one and therefore, accordingly, permission can be given. The relevant portion of the said judgement reiterating the said position reads thus:

" 6.The offence punishable under Section 326 of the Penal Code is non- compoundable. There is no dispute about this. The learned counsel for the appellant contended that, in fact, the appellant cannot be convicted under Section 326 of the Penal Code because there is no consistent evidence that the appellant used any dangerous weapon. The evidence on record indicates that he used a stick. Therefore, the appellant could be punished only under Section 325 of the Penal Code for voluntarily causing grievous hurt which is compoundable by the person to whom the hurt is caused with the permission of the court. The counsel submitted that in the circumstances, the conviction of the appellant under Section 326 of the Penal Code be converted into one under Section 325 of the Penal Code and the offence be compounded.

7. Section 320 of the Criminal Procedure Code ("the Code") pertains to offences punishable under the Penal Code only. It states which offences can be compounded, by whom they can be compounded and which offences can be compounded only with the permission of the court concerned. Sub-sections 3 to 8 thereof further clarify how Section 320 of the Code operates. Sub- section 9 thereof states that no offence shall be compounded except as provided by this section. The legislative intent is, therefore, clear. Compounding has to be done strictly in accordance with Section 320 of the Code. No deviation from this provision is permissible.

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9. It follows from the above discussion that since the offence under Section 326 of the Penal Code is non-compoundable, permission to compound it, cannot be granted.

10. We, however, find some substance in the submission of the appellant's counsel that on the basis of the evidence adduced in this case, it cannot be said with certainty that the appellant used an iron rod to hit PW 2 Uddesh. Though at the trial, the witnesses stated that the appellant used an iron rod to assault PW 2 Uddesh, admittedly the iron rod is not recovered and what is recovered is MO 1, a wooden stick. We notice from the judgment of the Sessions Court that the case of the prosecution was that the appellant struck a blow on PW 2 Uddesh with a wooden stick causing injury to his left eye. This story appears to have been not accepted by the courts below because the witnesses improved the story in the court that an iron rod was used. It has also come on record that PW 2 Uddesh filed a civil suit against the appellant for compensation and in that suit, he alleged that the appellant beat him with a wooden stick. The Sessions Court has referred to this suit and particularly the plaint (Ext. D1) which contains the statement that PW 2 was beaten with a wooden stick by the appellant. In our opinion, in the circumstances, it cannot be said with certainty that the appellant used an iron rod to beat PW 2. In such a situation, we are inclined to accept the version which is favourable to the appellant.

11. In the circumstances, in our opinion, the appellant's conviction under Section 326 of the Penal Code needs to be converted into one under Section 325 of the Penal Code. We accordingly, convert the conviction of the appellant from one under Section 326 of the Penal Code to one under Section 325 of the Penal Code. Offence under Section 325 of the Penal Code is compoundable by the person to whom the hurt is caused with the permission of the court. The question is whether in this case, permission to compound the offence should be granted because PW 2 Uddesh to whom the hurt is caused has made a request to this Court that offence be compounded?

12. In Ram Shanker v. State of U.P. [(1982) 3 SCC 388 (1) : 1983 SCC (Cri) 60] ,

the complainant and the accused had settled the criminal case and an application was made for compounding the offence. The accused were convicted for the offence under Section 307 of the Penal Code. This Court converted the conviction of the appellant from one under Section 307 of the Penal Code to that of an offence under Section 325 read with Section 34 of the Penal Code. Permission to compound the offence was granted and the appellants therein were acquitted.

13. Having converted the appellant's conviction into one under Section 325 of the Penal Code, we are inclined to follow the course adopted by this Court in Ram Shanker [(1982) 3 SCC 388 (1) : 1983 SCC (Cri) 60] and grant permission to compound the offence. The offence was committed on 24-8-1996. Eighteen long years have passed thereafter. The appellant and PW 2 Uddesh who suffered the grievous injury have compromised the case. They wish to accord a quietus to their disputes. We, therefore, grant permission to compound the offence under Section 325 of the Penal Code to the appellant and PW 2 Uddesh, who is added as Respondent 2 herein. The offence under Section 325 of the Penal Code is compounded. The impugned judgment [Dasan v. State of Kerala, Criminal Revision Petition No. 1931 of 2004, order dated 17-1-2012 (Ker)] is set aside. The appellant Dasan is acquitted. He is on bail. His bail bond stands cancelled. The appeal is disposed of.

39. Yet another judgement to be noted in this context is 2014 (13) SCC 52 in the matter of Sathayamurthy and Others vs State. In that case, the appellants were convicted for the offences punishable under Section 148, 149, 341, 325 of IPC. Out of these four punishable Sections, the offences under Sections 341 and 325 of IPC are compoundable, whereas, the offences punishable under Sections 148, 149 of IPC are non-compoundable. Therefore, when a plea to permit the parties to compound the offence was made, the Honourable Apex Court has held as follows:

"5. We have heard the learned counsel for the appellant-accused, Mr Luthra, learned Additional Solicitor General (AC) and the

learned counsel for the State of Tamil Nadu. They confirmed that the parties have entered into a compromise. They submitted that in view of the settlement, this Court may compound the offences as that will accord a quietus to all disputes between the parties. The counsel submitted that the accused and the complainant are cousins. After the compromise they have been staying peacefully in the village. It is in the interest of both sides to bury the hatchet and lead a peaceful life.

6. The offences under Sections 341 and 325 are compoundable. In view of the settlement they can be permitted to be compounded. However, the offences under Sections 148 and 149 IPC are not compoundable. Hence, permission to compound them cannot be granted. However, since the accused and the victim have entered into a compromise, we feel that it would be in the interest of both sides to reduce the sentence awarded to the accused under Sections 325 and 341 IPC to the sentence already undergone.

7. In Ram Lal v. State of J&K [(1999) 2 SCC 213 : 1999 SCC (Cri) 123] the accused were convicted for offence under Section 326 IPC, which is non-compoundable. Looking to the fact that the parties had arrived at a settlement and the victim had no grievance, this Court reduced the sentence for the offence under Section 326 to sentence already undergone by the appellant-accused. We are inclined to follow similar course.

8. In the result, the appeal is partly allowed. The offences under Sections 341 and 325 IPC, for which the appellants are convicted, are permitted to be compounded because they are compoundable. The appellants are acquitted of the said offences. The appellants are stated to have undergone more than six months' imprisonment. So far as the offences under Sections 148 and 149 IPC are concerned, the conviction of the appellants for the said offences is reduced to the sentence already undergone by them subject to the appellants paying Rs 30,000 as compensation to

victim Murugesan. The compensation be paid within three months from the date of this judgment.

9. This Court has already released the appellants on bail. In view of this order the bail bonds of the appellants are discharged subject to payment of the compensation of Rs 30,000 as directed by us. If the compensation is not paid consequences will follow."

40. After having scanned all these judgements of the Honourable Apex Court as have been referred to above, the following position is emerged:

(i) The compounding of offences has to be done strictly in accordance with law under Section 320 of Cr.P.C. and no deviation from this provision is permissible.

(ii) Only the offences which are covered by table (1) or table (2) of Section 320 of Cr.P.C. can be compounded and rest of the offences punishable under IPC cannot be compounded.

(iii) The permission granted by the Honourable Apex Court for compounding the offence in Y.Suresh Babu's case and Maheshchand's case cited supra, were declared to be decisions per incuriam by the Honourable Apex Court in Ramlal's case cited supra. The very same view had been taken by the Honourable Apex Court reiterating that the course adopted in Y.Suresh Babu's case and Maheshchand's case cited supra, was not in accordance with law, as has been declared by the Honourable Apex Court, in Bankat's case cited supra.

(iv) However, the Honourable Apex Court in Padmalayan and Another [2014(13) SCC 798] had permitted the parties to compound the offence punishable under Section 324 of IPC. At the same time, in Dasan's case as well as in Sathyamurthy's case cited supra, the Honourable Apex Court has adopted a different course of action for compounding the offences. In Dasan's case, the offences under Section 326 was converted to 325 of IPC and accordingly, court has permitted the parties to compound the offence. In Sathyamurthy's case, yet another method had been adopted by taking into account the factual matrix of the case by reducing the sentence of the appellants/Accused in that case, who had been punished for the offences punishable under Sections 148 and 149 of IPC, to the sentences already undergone by them.

41. When these are all the legal positions which clearly emerge from the series of judgements as have been cited above, the judgements, cited by the learned Senior Counsel appearing

for the appellants i.e., 2011 SCC Online Karnataka 3917 and 2009 SCC Online Punjab and Haryana 2260 would not support the plea of the appellants.

42. Here, in the cases at hand, in the first case, all the accused were convicted under Section 148 IPC and also under Section 324 of IPC. In the second case, both the accused persons were convicted under Section 324 of IPC. Both the offences i.e., punishable under Section 148 as well as under Section 324 of IPC are non-compoundable offences. Therefore, granting permission to these appellants to compound the offences which are non-compoundable would be in direct violation of Section 320(9) of Cr.P.C. The Apex Court, in the aforementioned decisions, has taken the consistent stand that only the offences shown in the table under Section 320 (1) and 320(2) of Cr.P.C. alone can be compounded and none else. When that being the position, whether the offences punishable under Sections 148 and 324 of IPC under which the Trial Court had convicted the appellants in both the respective cases can be compounded or not is to be gone into only by taking a clue and by following the dictum of Honourable Apex Court in some of the cases cited above.

43. In such circumstances, one of the course of action adopted by the Honourable Apex Court is converting the offences into a suitable punitive provisions of IPC by taking into account the evidences adduced before the Trial Court and the material objects recovered and produced before the Trial Court by the prosecution.

44. The other course of action which was adopted by the Honourable Apex Court in such circumstances is that, insofar as the conviction made against the appellants/ Accused for non-compoundable Sections, such sentences had been reduced only to the sentences already undergone by the appellants.

45. In the case at hand, it is to be noted that, in the first case not only the defacto complainant but, also all the three injured persons, who deposed as P.W.1. P.W.2 and P.W.3 have turned hostile. The Trial Court has recorded these aspects in the judgement impugned in the first case in the following terms:

"All the material witnesses examined by the Prosecution namely, P.W.1, Ayyadurai, P.W.2, Arumugam and P.W.3, Bharathikannan have

not supported the prosecution version in any manner and they were declared hostile on the request of the learned Additional Public Prosecutor and were cross examined but nothing favourable to the prosecution came out of them."

46. In the second case also, almost all the witnesses including the defacto complainant, who was examined as P.W.1 turned hostile and this aspect has been recorded by the learned Judge in the judgement impugned in the second case.

"Out of the 33 witnesses on the side of the prosecution, the defacto complainant PW.1 and other witnesses, PW2, PW4 to PW20, PW23 were turned hostile."

47. In the first case, the Trial Court has come to the conclusion that, the accused were found guilty for the offences punishable under Sections 148, and 324 IPC only on the basis of the evidences given by P.W.7, the Principal of Dr. Ambedkar Government Law College, Chennai and in this regard, the learned Trial Judge has recorded the following findings:

"In view of the above said legal position, though the P.W.42, P.W.44 & P.W.45, investigating officers committed commissions and omissions in collecting evidence and there were contradictions, inconsistencies, exaggerations or embellishments on the side of Prosecution side, there are no valid reasons to throw away totally the evidence of PW7, Principal in Charge of the Government, Ambedkar College, Chennai with regard to participation of accused, assaulted P.W1 to P.W.3 and caused injuries."

48. Similarly, in the second case, the learned Trial Judge has found the accused guilty under Section 324 of IPC and there were so much contradictions, inconsistencies, exaggerations or embellishment. Only on the basis of the evidence of P.W.3, who was the Principal in-charge of the Dr. Ambedkar Government Law College, Chennai, the Trial Court convicted the appellants/accused in the second case also.

49. The following findings of the Trial Court in the second case are worthy to be noted :

"49.Thus on perusal oral evidence of P.W.21,25,26,28 and 31 and of Ex.P37 and P38 and Ex.P2 to P5 & P8, it is found that P.W.1, Chithiraiselvan taken inpatient treatment at Kilpauk Govt. Hospital, Stanley Govt. Hospital and Royapettai Govt. Hospital, Chennai from 12.11.2008 to 13.12.2008. At the same time, the Prosecution failed to prove that whether the injury sustained by P.W.1 is simple or grievous.

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51....

52. As per the prosecution, the accused were day scholar students. Whereas, there is no evidence on the side of the Prosecution to show that how the Investigating Officer identified accused alone involved in the occurrence. Further to corroborate the arrest of the accused, who are said to be involved in the occurrence, the Investigating Officer PW.32, has not conducted Identification Parade to identify them through the injured witness PW.1. It shows that the Investigation Officers have failed to discharge their duties."

50. It is further to be noted that even in respect of constitution of offence under Section 148 of IPC, the important evidence, according to the prosecution was P.W.7 in the first case and P.W.3 in the second case, who is none other than the Principal of the college. In his deposition, he has stated as follows:

ளுகேள்வி / சம்பவத்தன்று கும்பலாக வந்த நபர்களை நீதிமன்றத்தில் உங்களால் அடையாளம் காட்ட முடியுமா?

பதில் / பெயர் குறிப்பிட்டு சொல்ல இயலாது. ஓரளவுக்கு என்னால் அடையாளம் காட்ட முடியும். இன்று ஆரில் இருக்கும் எதிரிகளில் ரவீந்திரன் என்பவரை மட்டுமே என்னால் அடையாளம் காட்ட முடியும் என்று சாட்சியம் அளித்தார்.

இந்த வழக்கு சம்பந்தமாக எந்த ஆய்வாளரும் என்னை விசாரணை

செய்யவில்லை, கு

51. The learned Senior Counsel appearing for the appellants have heavily relied upon the latest decision of the Honourable Apex Court in Unnikrishnan @ Unnikuttan vs. State of Kerala [in SLP...Crl.M.P.No.18630 of 2016, judgement dated 01.03.2017]. In the said case, the appellant/petitioner was convicted under Section 394 of IPC. Since the offence under Section 394 also is a non-compoundable offence, the Honourable Supreme Court had taken the following view:

"6. The short question which ultimately arose during the hearing is whether the offence under Section 394 could at all be compounded since the same is not covered by the provisions of Section 320 Cr.P.C.

7. The aforesaid question has troubled this Court on different occasions, not only in connection with compounding of offences punishable under the criminal justice system, but also in respect of civil matters, and in respect of matrimonial matters in particular, where the Court had to strike a balance between the rigidity of the law and doing substantial justice to the parties.

8. In order to meet certain unusual situations, this Court has from time to time taken recourse to innovations and the powers vested in it under Article 142 of the Constitution, in order to give a quietus to a litigation demanding a pragmatic solution.

9. In the case on hand, the petitioner is convicted for the offence punishable under Section 394 of the IPC and is sentenced to two years Rigorous Imprisonment. We are aware that the said offence is not compoundable within the scope of Section 320 Cr.P.C.

10. In series of decisions i.e., Bharath Singh vs. State of M.P and Ors., 1990 (Supp) SCC 62, Ramlal vs. State of J. & K, (1999) 2 SCC 213, Puttaswamy vs. State of Karnataka and Anr. (2009) 1 SCC 711, this Court allowed the parties to compound the offence even though the offence is a non-compoundable depending on the facts and circumstances of each case. In some cases this Court while imposing the fine amount reduced the

sentence to the period already undergone.

11. What emerges from the above is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.

12. Having regard to the facts of the present case, while taking into account the settlement arrived at between the parties and also considering the affidavits filed before us by each one of the applicants by way of joint application, we allow the application seeking permission to compound the offences."

52. No doubt, in some of the cases referred to above, the Honourable Apex Court permitted the parties to compound the offences which are non-compoundable within the meaning of Section 320 of Cr.P.C.. Those decisions had been taken by the Honourable Apex Court by invoking the power under Article 142 of the Constitution. Therefore, the said course of action cannot be adopted by this Court.

53. However, on perusal of the evidences adduced before the Trial Court in both cases, in so far as the constituting of offence under Section 148 of IPC, it is admitted that the prosecution has not conducted any identification parade. Nor the only crucial witness, even according to the Trial Court, i.e., P.W.7 in the first case and P.W.3 in the second case i.e., the Principal of the College, who also had categorically stated before the Trial Court that, he was not able to identify the accused persons except one.

54. It is also to be noted that, there had been no eye witness to substantiate the exact course of action by any particular accused using dangerous weapon to cause hurt voluntarily on the defacto complainants/injured.

55. But at the same time, there had been some evidence to constitute the offences under which, there had been infliction of hurt or grievous hurt on the defacto complainants/injured, in both cases, as the victim/injured had taken treatment at Government hospital for a month time.

56. It is also to be noted that, in both cases, the defacto

complainant/injured, who deposed before the Trial Court had turned completely hostile.

57. By taking into account all these evidentiary value as well as the circumstances of the case as discussed above, this Court is of the view that, if at all the accused in both cases are to be punished, they can only be punished either under Section 323 or under Section 325 of IPC. Therefore, by following the course of action adopted by the Honourable Apex Court in various cases as cited above, and by taking into account the circumstances of the case, this Court is inclined to convert the offence, under which the appellants/accused were punished in both cases, into the offence under Section 325 of IPC. Since the offence punishable under Section 325 of IPC is a compoundable offence, in order to give a quietus to the litigation to reach a pragmatic solution and also by taking into account that most of the appellants are qualified lawyers as of now, since they are already enrolled as advocates, however, their practice had been suspended because of the conviction they faced, the appellants are permitted to compound the said converted offence punishable under Section 325 of IPC.

58. In the result, the converted offence as set out above punishable under Section 325 of IPC, against all the appellants in both cases, are hereby compounded in order to give quietus to the issue.

59. The fine amount already paid by the appellants need not be refunded to the appellants and the said amount can be utilised by the authorities concerned for providing legal aid to the needy and poor litigants through the Tamil Nadu State Legal Services Authority.

60. In view of the said permission given for compounding the offence punishable under Section 325 of IPC, the punishment given by the Trial Court in both cases are hereby set aside. Since the appellants have already been on bail, the respective bail bonds of the appellants stand discharged. The appeals are ordered accordingly. Connected M.Ps., if any, stand closed.

Before part with this case, this Court wants to make a fervent appeal to the students community that, the human life is a priceless gift given by the almighty, that too, without any major defects in the body like defect on eye, ear or any other part of the body, which means, having born as a healthy child, when we grow, we should cherish the human value. In this regard, during the school days and college days we should learn not only the academic studies but also the high morals. One must get instilled to lead a purposeful and meaningful life not only to the individual and to the family but also to the society

at large. Hence, in the school and college days, only the universal brotherhood shall be the manthra among the students and in this regard, whatever animosity, ill will or hatchet emerged in day today life, that should be buried then and there. Ours is the nation of Mahatma Gandhi, who has given the greatest weapon to the mankind, which is none else than the "Non-violence".

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1. The XVII Additional Sessions Judge
Chennai.
2. The Principal Sessions Judge
Chennai.
3. The Metropolitan Magistrate
No.VII, George Town, Chennai.
4. The Chief Metropolitan Magistrate
Egmore, Chennai 8.
5. The Inspector of Police
B2, Esplanade Police Station
Chennai 600 104.
6. The Public Prosecutor
High court, madras 104.

Copy to

The section officer
Criminal Section
High court, Madras 104.

+5 Ccs to Mr.Arasuganesan, Advocate sr 74274

+1 CC to Mr.Rajkumar Pandian, Advocate sr 74996(09/11/2018)

Crl. A.Nos.129 & 187 of 2016

GJ(CO)
SP(31/10/2018)