

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

211

**CRM-M-42269-2020
Date of decision: 08.02.2021**

Mahalovya Gauba

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Umesh Aggarwal, Advocate
for the petitioner.

Mr. P.S. Walia, Asstt. A.G., Punjab
for respondent No.1-State.

Mr. Anil Chawla, Advocate
for respondent No.2.

None for U.T., Chandigarh.

Ms. Geeta Sharma, DAG, Haryana.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C.") for cancellation of anticipatory bail granted to respondent No.2 vide order dated 19.11.2020 passed by learned Sessions Judge, Amritsar in case FIR No.0006 dated 13.11.2020 registered under Sections 406 and 420 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC") at Police Station NRI Amritsar.

2. Vide order dated 19.01.2021, the petitioner and respondent No.2 were required to appear before this Court in person through video

conferencing. The petitioner and respondent No.2 appeared before this Court on 25.01.2021 and stated that they have arrived at compromise but the terms of the compromise are yet to be reduced in writing while the possession of the cars has been handed over to the police along with post-dated cheques.

3. Due to both the offences subject matter of the present case being compoundable with the permission of the Court, vide order dated 25.01.2021 the matter was ordered to be referred to Lok Adalat, Amritsar and the petitioner and respondent No.2 were directed to appear before the Secretary, District Legal Services Authority, Amritsar, who was directed to place their matter before the Lok Adalat on 29.01.2021 or any other date convenient to the parties for recording the terms of amicable settlement between the parties as agreed to by them and pass appropriate orders on the basis thereof in terms of the provisions of the Legal Services Authorities Act, 1987.

4. The Secretary, District Legal Services Authority, Amritsar was directed to send a report in this regard along with a copy of the order passed by the District Legal Services Authority, Amritsar on reference by the parties.

5. This Court also observed in its order dated 25.01.2021 that in number of cases the parties express desire to compromise or compromises are arrived at between the parties at the time of proceedings before the police officers during investigation/preliminary enquiry proceedings but such compromises do not terminate the proceedings and subject the parties to further legal procedures/litigations. More often than not compromises arrived at by

the parties before the police officers are subsequently challenged on the grounds of coercion/undue influence/undue pressure by the police officers. Furthermore, such compromises when not complied with do not provide any remedy of seeking execution and further criminal or civil litigation starts again. In view of the permissibility of institution of pre-litigative references and reference of compoundable criminal cases and disposal thereof on the basis of amicable settlement between the parties by Lok Adalat under the provisions of the Legal Services Authorities Act, 1987 it would be appropriate that such matters are referred to Secretary of the District Legal Services Authority concerned for placing the same before the Lok Adalat for recording terms of the settlement/making efforts for amicable settlement between the parties and passing appropriate legally executable orders on the basis thereof. Reference of such matters to Lok Adalat will guard against and rule out subsequent allegations of coercion/undue influence/undue pressure by the police officers and disposal of such references by the Lok Adalat will bind the parties, provide them the remedy of execution in case of non-compliance and thereby prevent unnecessary litigation.

6. Accordingly, while ordering notice to State of Haryana and U.T., Chandigarh as similar cases of compromise between the parties before the police officers also arose in the State of Haryana and U.T., Chandigarh, it was directed that in compoundable cases where the parties express their desire to settle the matter/arrive at compromise, the matter may be referred to Secretary, District Legal Services Authority concerned for placing the same before the Lok Adalat for recording terms of settlement/making efforts for amicable settlement between the

parties and disposal of the matter on the basis of such amicable settlement by passing appropriate orders executable in accordance with law. In cases of non-compoundable offences, which involve civil as well as criminal cause of action and in which quashing of FIR is permissible in accordance with law on the basis of compromise, where the parties express desire of compromising the matter or arrive at settlement, the matter may be referred to the Secretary, District Legal Services Authority concerned for placing the same before the Lok Adalat for recording terms of settlement/making efforts for amicable settlement between the parties and disposal of the matter on the basis of such amicable settlement by passing appropriate orders executable in accordance with law regarding civil cause of action with direction to the parties to approach this Court for quashing of FIR on the basis of the compromise.

7. Ms. Geeta Sharma, DAG, Haryana has appeared for State of Haryana but none has appeared for U.T., Chandigarh today.

8. In compliance with order dated 25.01.2021, learned Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, Amritsar has sent report dated 04.02.2021 along with report dated 03.02.2021 of learned Judicial Magistrate 1st Class, Amritsar which is taken on record.

9. In his report dated 04.02.2021 learned Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, Amritsar has mentioned that Special Lok Adalat Bench was constituted and report dated 03.02.2021 had been received along with statements of the parties and compromise. In his report dated 03.02.2021 learned Judicial

Magistrate 1st Class, Amritsar has mentioned that statements of petitioner-complainant Mahalovya Gauba and respondent No.2-accused Parminder Singh qua compromise were recorded. As per statements of the parties, they compromised the matter voluntarily and without any coercion or undue influence and they admitted the genuineness of the compromise.

10. Learned Counsel for the petitioner has submitted that in view of the compromise, the petitioner does not want to continue with the present petition for cancellation of anticipatory bail granted to respondent No.2 by learned Sessions Judge, Amritsar and the same may be dismissed as withdrawn.

11. In view of the report of learned Judicial Magistrate 1st Class, Amritsar and submissions made by learned Counsel for the petitioner, the petition for cancellation of anticipatory bail granted to respondent No.2 by learned Sessions Judge, Amritsar is hereby dismissed as withdrawn.

12. However, it may be observed here that even though in compliance with order dated 25.01.2021 the matter was referred to Lok Adalat and on reference of the matter the Lok Adalat recorded the compromise and statements of the parties but the Lok Adalat did not pass any award/order on the reference. The matter, therefore, requires detailed examination and also intervention by issuance of appropriate directions by this Court in exercise of powers under Section 482 of the Cr.P.C. for giving effect to its order and also preventing abuse of process and securing the ends of justice.

13. The Legal Services Authorities Act, 1987 was enacted to

give effect to the provisions of Article 39A of the Constitution of India and to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

14. Chapter VI of the Legal Services Authorities Act, 1987 deals with Lok Adalats and embodies the provisions from Section 19 to 22 which read as under:-

"19. Organization of Lok Adalats.—

*(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and **for exercising such jurisdiction** and for such areas as it thinks fit.*

(2) Every Lok Adalat organised for an area shall consist of such number of –

(a) serving or retired judicial officers ; and

(b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualification of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of Sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of –

(i) any case pending before ; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised :

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

(emphasis supplied)

20. Cognizance of cases by Lok Adalats.–

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19 ; -

(i) (a) the parties thereof agree ; or

(b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement ; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination :

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under Sub-section (1) for disposal in

accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the Court, such court shall proceed to deal with such case from the stage, which was reached before such reference under sub-section (1)."

(emphasis supplied)

21. Award of Lok Adalat-

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to under sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

(emphasis supplied)

22. Powers of Lok Adalat or Permanent Lok Adalat-

(1) The Lok Adalat shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:-

(a) The summoning and enforcing the attendance of any witness and examining him on oath.

(b) The discovery and production of any document.

(c) The reception of evidence on affidavits.

(d) The requisitioning of any public record or document or copy of such record or document from any court or office and

(e) Such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat shall be deemed to be a civil court for the purpose of Section 195 and Chapter XXVI of the

Code of Criminal Procedure, 1973(2 of 1974).

15. In ***State of Punjab and another Vs. Jalour Singh and others : (2008) 2 SCC 660***, a three-judge Bench of the Supreme Court observed that the endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and weaknesses, advantages and disadvantages of their respective claims.

16. However, in ***M.P. State Legal Services Authority Vs. Prateek Jain and another : (2014) 10 SCC 690***, Hon'ble Supreme Court cautioned that the Court should not refer even those matters to the Lok Adalat which have already been settled just to inflate the figures of decision/settlement before the Lok Adalat for statistical purposes.

17. A perusal of Section 19(5) of the Legal Services Authorities Act, 1987 shows that jurisdiction is thereby conferred on Lok Adalat to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of (i) any case pending before the Court; or (ii) any matter which is falling within the jurisdiction of but is not brought before the Court for which the Lok Adalat is organised. Therefore, any civil or criminal matter at pre-litigative stage can be referred to Lok Adalat. The proviso to Section 19 (5) of the Legal Services Authorities Act, 1987 excludes jurisdiction of the Lok Adalat in respect of any case or matter relating to an offence not compoundable under any law. It is manifest from the same that Lok Adalat constituted under Section 19 of the Legal Services Authorities

Act, 1987 shall have no jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any matter relating to an offence not compoundable under any law. (see *Urmila Masomat Vs. State of Bihar, (Patna) : 2016(4) PLJR 264.*)

18. However, the proviso to Section 19 (5) of the Legal Services Authorities Act, 1987 by necessary implication means that the Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any matter relating to an offence compoundable under any law.

19. Criminal cases involving compoundable offences fall into two categories: (i) criminal cases compoundable under Section 320(1) of the Cr.P.C. without permission of the Court and (ii) criminal cases compoundable under Section 320(2) of the Cr.P.C. with permission of the Court. Since jurisdiction of the Lok Adalat is barred only in respect of non-compoundable criminal cases, Lok Adalat shall have jurisdiction to deal with compoundable criminal cases of both the categories compoundable under Section 320(1) of the Cr.P.C. without permission of the Court and compoundable under Section 320(2) of the Cr.P.C. with permission of the Court.

20. There is no doubt whatsoever that Lok Adalat has jurisdiction to deal with criminal cases involving offences compoundable under Section 320(1) of the Cr.P.C. without permission of the Court and record compromise in such cases and pass orders of acquittal/award executable as Civil Court decree. However, there is a serious doubt as to whether Lok Adalat constitutes “the Court” within the meaning of Section 320(2) of the Cr.P.C. and whether Lok Adalat

can grant permission to compound offences compoundable under Section 320(2) of the Cr.P.C. with permission of the Court.

21. A statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of Legislature. The duty of judicature is to act upon the true intention of the Legislature—the *mens or sententia legis*. (See ***South Asia Industries (Pvt.) Ltd. Vs. S. Sarup Singh : AIR 1966 SC 346***) If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. A statute or any enacting provision therein has to be so construed as to make it effective and operative and the Court must lean against a construction which reduces it to a futility. The Parliament would legislate only for the purpose of bringing about an effective result. The Court has, therefore, to reject that construction which will defeat the plain intention of the Legislature even though there may be some inexactitude in the language used. It is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application. (See ***Commissioner of Income Tax, Delhi Vs. Teja Singh : AIR 1959 SC 352*** and ***Rao Shiv Bahadur Singh and another Vs. The State of Vindhya Pradesh : AIR 1953 SC 394***.) The Parliament conferred on Lok Adalat the jurisdiction to determine, arrive at compromise and dispose of on the basis of the compromise dispute between the parties in respect of any matter relating to an offence compoundable under any law. The Parliament cannot be said to be unaware of the categorization of compoundable criminal cases in two categories of offences

compoundable with permission of the Court and offences compoundable without permission of the Court. However, the Parliament did not divest Lok Adalat of jurisdiction to deal with and dispose of dispute in respect of any matter relating to an offence compoundable with permission of the Court. It is well settled that power to do a thing includes all incidental powers required to do the same. Therefore, in the very nature of things, the Parliament cannot be said to have intended to divest Lok Adalat of the power to grant permission to compound offences compoundable with permission of the Court while conferring the jurisdiction to deal with and dispose of dispute relating to an offence compoundable under any law. The intention of the Legislature is clear and has to be given full effect keeping in mind the object of the enactment also and the Court cannot add/read the words '**compoundable with permission of the Court**' after the words '**not compoundable under any law**' in the proviso to Section 19(5) of the Legal Services Authorities Act, 1987. Consequently, Lok Adalat must be held to have jurisdiction to grant permission for composition of offences compoundable with permission of the Court.

22. Section 20 (3) of the Legal Services Authorities Act, 1987 mandates that where any case is referred to a Lok Adalat under sub-section 20(1) of the Legal Services Authorities Act, 1987 or where a reference has been made to it under sub-section 20 (2) of the Legal Services Authorities Act, 1987, the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. Section 20 (5) of the Legal Services Authorities Act, 1987

also mandates the Lok Adalat to return the record of the case to the court, from which the reference was received, for disposal in accordance with law only on the ground that no compromise or settlement could be arrived at between the parties and no other ground. It follows that if the parties arrive at compromise/ settlement in a case compoundable under Section 320 (2) of the Cr.P.C. with permission of the Court, the Lok Adalat can dispose of the same on the basis of compromise by granting permission to compound and is not bound to return the case on the ground of the offence being compoundable under Section 320 (2) of the Cr.P.C. with permission of the Court.

23. In view of Section 21 (1) of the Legal Services Authorities Act, 1987 every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court. Section 21 (2) of the Legal Services Authorities Act, 1987 declares that every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award. Needless to observe here that in case of any fraud exercised on Lok Adalat such award/order would be liable to set aside.

24. Even though Lok Adalat is not specifically defined in the Legal Services Authorities Act, 1987 to be Criminal Court so as to be treated as the Court as referred to in Section 320(2) of the Cr.P.C., which deals with the powers of the Court in according permission for compounding the offence by the persons mentioned in Column No. 3 of the table appended thereto but in view of provisions of Section 19(1) and 21(1) of the Legal Services Authorities Act, 1987 Lok Adalat has to be treated to be the Court for which the same is organized and can

pass award/order which is deemed to be decree of Civil Court or an order of any other court for which the Lok Adalat is organized. It follows therefrom that under the Legal Services Authorities Act, 1987, criminal cases of compoundable nature can be referred to Lok Adalat and if the matter is compromised/settled in Lok Adalat, Lok Adalat may pass order of acquittal under Section 320(8) of the Cr.P.C. as if it is a Criminal Court constituted for that purpose/award executable as Civil Court decree in view of Section 21(1) of the Legal Services Authorities Act, 1987.

25. No doubt, in view of proviso to Section 19 (5) of the Legal Services Authorities Act, 1987 there will be a bar to reference of dispute in respect of any matter relating to an offence not compoundable under any law, yet there will be no absolute bar in identifying and referring to the Lok Adalat any matter involved therein which constitutes a civil dispute between the parties. Similar view has been taken by Kerala High Court in ***Sreedharan Vs. S.I. of Police (Kerala) : 2008(24) R.C.R.(Criminal) 449.***

26. In ***K. Srinivas Rao Vs. D.A. Deepa : 2013 (3) SCC 226***

Hon'ble Supreme Court observed as under:-

“35. We, therefore, feel that though offence punishable under Section 498- A of the IPC is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. This is, obviously, not to dilute the rigour, efficacy and purport of Section 498-A of the IPC, but to locate cases where the matrimonial dispute can be nipped in bud in an equitable manner. The judges, with their expertise, must ensure that this exercise does not lead to the erring spouse using mediation process to get out of clutches of the law. During mediation, the parties can either decide to part company on mutually agreed terms or they may decide to

patch up and stay together. In either case for the settlement to come through, the complaint will have to be quashed. In that event, they can approach the High Court and get the complaint quashed. If however they chose not to settle, they can proceed with the complaint. In this exercise, there is no loss to anyone. If there is settlement, the parties will be saved from the trials and tribulations of a criminal case and that will reduce the burden on the courts which will be in the larger public interest. Obviously, the High Court will quash the complaint only if after considering all circumstances it finds the settlement to be equitable and genuine. Such a course, in our opinion, will be beneficial to those who genuinely want to accord a quietus to their matrimonial disputes. We would, however, like to clarify that reduction of burden of cases on the courts will, however, be merely an incidental benefit and not the reason for sending the parties for mediation. We recognize 'mediation' as an effective method of alternative dispute resolution in matrimonial matters and that is the reason why we want the parties to explore the possibility of settlement through mediation in matrimonial disputes."

27. The observations in above referred judgment also hold good in respect of the alternative dispute resolution method of settlement through Lok Adalat.

28. Non-compoundable criminal cases may arise out of property, commercial, family/matrimonial disputes which may involve civil as well as criminal cause of action. For example criminal case involving non-compoundable offence of 498-A of the IPC arises out of matrimonial dispute involving questions of restitution of conjugal rights or dissolution of marriage by decree of divorce, custody of children and grant of maintenance under Section 125 of the Cr.P.C. or the Hindu Adoption and Maintenance Act, 1956. Similarly, criminal cases involving offences punishable under Section 452/326 of the IPC may arise out of family dispute regarding inheritance/partition/possession of moveable or immoveable joint family properties. Cases involving forgery punishable under Section

467 of the IPC may involve questions of recovery of money/restitution of property. In such cases matters involving civil cause of action can be referred to Lok Adalat which can record compromise between the parties and pass an award regarding civil cause of action which will be binding on the parties and executable as Civil Court decree and direct them to approach the High Court for quashing of the FIR. In the eventuality of an executory compromise to be complied with by the parties on quashing of the FIR by the High Court, the Lok Adalat may, if so considered appropriate, also keep the matter pending till disposal of the matter regarding quashing of the FIR by the High Court and after quashing of the FIR by the High Court, pass an award which will be binding on parties and executable as Civil Court decree.

29. In cheque dishonour cases more often than not the parties compromise by stipulating for payment even by issuance of further cheques in future. Based on such a compromise even the complaint is withdrawn in some cases where in case of default disputed and debatable question of restoration of the complaint arises. Generally, the concerned Judicial Magistrate declines restoration of complaint on the ground of having no power of review which not only results in apparent injustice but also increases the work of the Higher Courts for intervention to prevent miscarriage of justice. Another practice followed in cases of such compromise is to keep the matter pending till the entire payment is made which leads to delayed disposal and attending of the Court on adjourned dates of hearing. In cheque dishonour cases there can be greater recourse to alternative dispute resolution mechanism of settlement before Lok Adalat which can on

such compromise of the matter pass award executable as Civil Court decree.

30. In ***K.N. Govindan Kutty Menon Vs. C.D. Shaji : 2012(1) R.C.R.(Criminal) 102***, a case under Section 138 of the Negotiable Instruments Act, 1881 was referred to Lok Adalat constituted under the Legal Services Authorities Act, 1987 by a Criminal Court where the parties agreed on terms and provided time for payment of the amount. The compromise was recorded and accordingly an award was passed by the Lok Adalat and the criminal case was closed. On default when the complainant filed an execution petition before the Munsiff's Court for realisation of the amount, the Munsiff dismissed the execution petition on the ground that Criminal Court cannot pass a civil decree even in Lok Adalat which view was affirmed by Andhra Pradesh High Court. On appeal the Hon'ble Supreme Court held that if the case under Section 138 of the Negotiable Instruments Act, 1881 is referred to Lok Adalat by a criminal court and if the matter is settled in Lok Adalat, then by virtue of the deeming provision contained in Section 21(1) of the Legal Services Authorities Act, 1987, an award passed by Lok Adalat based on the compromise has to be treated as a Civil Court decree capable of execution by a Civil Court. In that case Hon'ble Supreme Court observed as under:-

“17. From the above discussion, the following propositions emerge :

(1) In view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court.

(2) The Act does not make out any such distinction between the reference made by a civil court and criminal court.

(3) There is no restriction on the power of the Lok

Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various Courts (both civil and criminal), Tribunals, Family court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature.

(4) Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.”

31. It follows that in cases where the parties arrive at executory compromises involving payment/performance of contractual/personal obligation/undertaking in future, passing of award by Lok Adalat, which will be binding on the parties and executable as Civil Court decree, will put an end to any further litigation which may arise in case of non-compliance of such executory compromises.

32. Section 320 (1) of the Cr.P.C. does not specifically in so many words lay down that compounding can be done only after filing of charge sheet under Section 173 (2) of the Cr.P.C. and not before although use of the expression **“with the permission of the Court before which any prosecution for such offence is pending”** in Section 320(2) of the Cr.P.C. seems to suggest the same. The question which arises is whether in compoundable criminal cases offences involved can be compounded before filing of charge sheet under Section 173 (2) of the Cr.P.C. at the stage of investigation.

33. In ***Komallaplli Rama Venkata Dandapani Vs. State of A.P. Through S.H.O. Narsapur Town P.S, 2004 (1) ALT 605*** the Andhra Pradesh High Court has taken the view that in compoundable criminal cases, the offences can be compounded even before filing of charge-sheet under Section 173 (2) of the Cr.P.C. when the case is still

at the stage of investigation. In that case the Andhra Pradesh High Court observed as under:-

"When both the complainant and the accused have entered into a compromise and are willing to compound the offence which is compoundable as per Section 320 Cr.P.C., 1973 merely because the charge sheet is not filed, the Court need not shirk the responsibility to compound the offence because there is nothing in Section 320 Cr.P.C., 1973 to show that compounding can be done only after filing of charge sheet. If the offence, which requires permission of the Court to do so, is to be compounded, the Court can examine the case and decide whether or not to accord permission to compound. If it feels that permission for compounding can be accorded, it can give the permission even when the charge sheet is not filed and the case is still under investigation. If the offence intended to be compounded does not require permission of the Court and if the Court finds that the person with whose consent the offence can be compounded has actually given the consent for compounding, it can compound the offences even when it is at the stage of investigation...."

34. I am in agreement with the view taken by Andhra Pradesh High Court. Where the complainant/person concerned and the accused compromise at the initial stage of investigation, the investigation in such a case may not be of much use in ascertaining the facts and circumstances and collecting the evidence due to unwillingness of the complainant/person concerned and also the accused to cooperate with the Investigating Officer. In such cases the delay in investigation and filing of the charge-sheet under Section 173 (2) of the Cr.P.C. may not only cause inconvenience and hardship to the complainant/person concerned and/or the accused but may also defeat the very purpose of the compromise. To insist for filing of charge-sheet under Section 173 (2) of the Cr.P.C. will not only involve wastage of the time, energy and resources of the Investigating Agency but will also be an empty formality for the ritual of acceptance of the composition of the offences

by the complainant/person concerned and the accused. Therefore, it will not only be logical and reasonable but also in furtherance of the legislative object of the Parliament to hold that in compoundable criminal cases, offences involved can be compounded before filing of charge sheet under Section 173 (2) of the Cr.P.C. at the stage of investigation.

35. So far as Lok Adalat is concerned, clothing of the same by the Parliament with jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any matter relating to an offence compoundable under any law which is falling within the jurisdiction of and is not brought before any Court for which the Lok Adalat is organized leaves no room for doubt that offences involved in compoundable criminal cases can be compounded before Lok Adalat before filing of charge-sheet under Section 173 (2) of the Cr.P.C. at the stage of investigation on pre-litigative reference made to it by the District Legal Services Authority/Taluk Legal Services Committee organising the Lok Adalat under Section 20(2) of the Legal Services Authorities Act, 1987.

36. The legal position emerging from analysis of the relevant statutory provisions and judicial precedents may be summarized as under:-

- (i) under the Legal Services Authorities Act, 1987, Lok Adalat organized by the National Legal Services Authority/State Legal Services Authority/District Legal Services Authority/Taluk Legal Services Committee for Criminal Courts has jurisdiction to determine and to arrive

at a compromise or settlement between the parties to a dispute in respect of any case or matter relating to an offence compoundable under any law and arrive at a compromise or settlement between the parties and can dispose of the case or matter on the basis thereof.

- (ii) In such cases the Lok Adalat has the jurisdiction to entertain and allow application for grant of permission to compromise and compound offences compoundable with permission of the Court.
- (iii) In compoundable criminal cases the offences can be compounded even before filing of charge-sheet under Section 173 of the Cr.P.C. when the case is still at the stage of investigation.
- (iv) Criminal cases involving compoundable offences can be referred by the Criminal Court, which has territorial jurisdiction to try the compoundable offences involved, after registration of the FIR at the stage of investigation before filing of the charge sheet or at any stage of the proceedings after filing of the charge sheet but before judgement to Lok Adalat and if the matter is compromised/settled in Lok Adalat, Lok Adalat may pass award embodying order of acquittal as if it is a Criminal Court constituted for that purpose and/or award embodying order for payment/performance of contractual/personal obligation/undertaking executable as Civil Court decree.
- (v) In compoundable criminal cases where the parties express

their desire to settle the matter/arrive at compromise in the course of any preliminary enquiry or investigation by the Police, the matter may be referred to Secretary, District Legal Services Authority concerned for placing the same before the Lok Adalat under Section 20(2) of the Legal Services Authorities Act, 1987 for recording terms of settlement/making efforts for amicable settlement between the parties and disposal of the matter on the basis of such amicable settlement by passing appropriate order/award executable in accordance with law.

- (vi) In cases of non-compoundable offences arising out of matrimonial, family or commercial disputes which involve civil as well as criminal causes of action and in which quashing of FIR is permissible in accordance with law on the basis of compromise, where the parties express desire of compromising the matter or arrive at settlement in the course of preliminary enquiry or investigation, the matter may be referred to the Secretary, District Legal Services Authority concerned for placing the same before the Lok Adalat under Section 20(2) of the Legal Services Authorities Act, 1987 and reference can also be made in appropriate cases by the concerned Criminal Court to the Lok Adalat for making efforts for amicable settlement between the parties, recording terms of settlement and disposal of the matter on the basis of such amicable settlement by passing appropriate order/award executable

in accordance with law regarding civil cause of action with direction to the parties to approach this Court for quashing of FIR on the basis of the compromise.

37. In view of the above referred legal perspective, Lok Adalat Bench, Amritsar to which the matter was referred was under an obligation to dispose of the same by passing an order/award executable as Civil Court decree after giving the parties opportunity to apply for grant of permission to compound the offences involved and granting such permission even before filing of the charge-sheet under Section 173 of the Cr.P.C. while the matter was pending at the stage of investigation. Accordingly, Lok Adalat Bench, Amritsar would be bound to take up the matter and dispose of the same in accordance with law as referred to above.

38. A copy of this order be supplied to learned State Counsel representing the States of Punjab and Haryana and be sent to the Public Prosecutor, U.T., Chandigarh and also to the Director General of Police, Punjab, Haryana and U.T., Chandigarh respectively for requisite compliance regarding issuance of appropriate instructions as directed vide order dated 25.01.2021 and Member Secretaries, State Legal Services Authorities, Punjab, Haryana and U.T., Chandigarh and to all District and Sessions Judges in the States of Punjab and Haryana and U.T., Chandigarh and Secretary, District Legal Services Authority, Amritsar for information/requisite compliance.

08.02.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes