IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.895 of 2025

An appeal under Section 13 of the Odisha Protection of Interest of the Depositors (In Financial Establishments) Act, 2011 read with Section 482 of Cr.P.C.

Kishore Chandra Jena & Anr. . ***Appellants***

Represented By Adv.

Mr. Subash Chandra Tripathy

-versus-

State of Odisha and another . ***Respondents***

Represented By Adv.

Mr. D.K. Sahoo, AGA

Mr. A.K. Nayak, Adv. for OPID

CORAM:

THE HON'BLE MR. JUSTICE A.K.MOHAPATRA

Date of hearing : 14.08.2026 | Date of Judgment : 31.10.2026

A.K. Mohapatra, J. :

1. The present Appeal, under Section 13 of the Odisha Protection of Interests of Depositors (In Financial Establishments) Act, 2011 (hereinafter referred to as the "OPID Act") read with Section 482 of the

Cr.P.C, has been preferred by the Appellants, who were arrayed as opposite parties before the learned Presiding Officer, Designated Court under the OPID Act, Cuttack, assailing the order dated 20.05.2025, at Annexure-A1, passed in C.T. Case No.34 of 2015.

FACTUAL MATRIX OF THE CASE

2. The genesis of the prosecution lies in a police complaint lodged by Respondent No. 2, Sanjukta Sethy (hereinafter, "the complainant"), on 23.06.2015 at Chauliaganj Police Station, alleging, inter alia, that a sum of Rs. 3,01,400/- (Rupees three lakh one thousand four hundred) had been paid by her as instalment to the Appellants, who are the Director and Managing Director respectively of M/s. Vasundhara Land & Developers Pvt. Ltd., towards purchase of a plot of land. It was alleged that despite the lapse of three years, neither was the plot conveyed to her nor was the money refunded, occasioning harassment to the complainant.

3. It was on the strength of the aforesaid complaint, an FIR under Sections 420/34 of the Indian Penal Code, 1860 ("IPC") was registered against the Appellants, who were thereafter arrested. The Charge-sheet was submitted on 29.09.2015, whereby, in addition to the offences under Sections 420/34 IPC, Section 6 of the OPID Act was also added against the Appellants. A copy of the F.I.R and the Chargesheet is available at

Annexure-A2. The matter was registered and tried as C.T. Case No. 34 of 2015 before the learned Designated Court constituted under the OPID Act, Cuttack, and evidence, including examination of certain witnesses, proceeded before the said Court.

4. During the pendency of the trial, the Appellants and the complainant arrived at an amicable settlement. By an agreement dated 08.04.2025, the Appellants paid to the complainant a sum of Rs. 5,50,000/- (Rupees five lakh fifty thousand), inclusive of interest, being an amount substantially in excess of the principal sum originally alleged to have been paid by the complainant. Under the said agreement, the complainant categorically acknowledged receipt of the said amount and recorded her readiness and willingness to appear before this Court for quashment of the FIR and the consequent proceedings. A copy of the agreement and settlement dated 08.04.2025 is at Annexure-A3.

5. It is pertinent to mention herein that pursuant to the aforesaid settlement, the Appellants had earlier approached this Court in CRLMC No.3846 of 2023 seeking quashment of the proceedings. During the pendency of the said proceeding, by order dated 02.09.2023, at Annexure-A4, this Court passed interim orders staying further proceedings before the learned Designated Court. Subsequently, by order dated 07.05.2025, a copy of which is available at Annexure-A5, this

Court, taking note that the petitioners therein relied upon Section 7 of the OPID Act for compounding of the offence but had approached this Court without first moving the competent authority or the Designated Court for permission to compound, granted liberty to move an appropriate application before the Designated Court within two weeks, to be considered in accordance with law. Pursuant thereto, the Appellants approached the learned Designated Court seeking appropriate relief in view of the settlement arrived at between them and the complainant. The learned Designated Court, however, by order dated 20.05.2025, at Annexure-A1, declined to entertain the prayer.

6. The Appellants thereafter approached the Hon'ble Supreme Court in SLP (Crl.) No.8661 of 2025, whereupon, by order dated 22.07.2025, at Annexure-A6, the Hon'ble Supreme Court permitted the Appellants to assail the order dated 20.05.2025 before this Court and directed that the learned Trial Court shall not pass a final order for a period of eight weeks, thereby according interim protection to the Appellants. It is in the aforesaid background that the Appellants have approached this Court by filing the present appeal with the prayer made hereinabove.

CONTENTIONS OF THE APPELLANTS

7. Heard Mr. Subash Chandra Tripathy, learned counsel appearing for the Petitioner. The learned counsel, at the outset, submitted that the entire grievance of the complainant, which had set the criminal law in motion, stands satisfied by reason of the settlement dated 08.04.2025, under which the complainant has received an amount considerably higher than what was originally claimed by her, and has, in categorical terms, expressed her willingness to have the FIR and the consequent proceedings quashed. It was submitted that once the very person at whose instance the prosecution was launched has been placated and has recorded her satisfaction, the contesting Respondent, i.e., the State, cannot be heard to oppose the prayer for compounding/quashment on a plane divorced from the interest of the complainant.

8. It was also contended by the learned counsel that Section 7 of the OPID Act, providing for compounding of offences punishable under Section 6 thereof, stood on the statute book as on 23.06.2015 (the date of registration of the FIR) and equally on 29.09.2015 (the date of filing of the charge-sheet), its omission having been brought about only by a subsequent amendment. It was submitted that a penal statute, and any ancillary provision forming part of its scheme, operates prospectively and cannot, absent an express legislative notification to the contrary, be

applied so as to divest an accused of a benefit available to him on the date of the alleged commission of the offence. It was accordingly submitted that the unamended Section 7, as available in the 2015 version of the statute, would continue to govern the transaction between the parties regardless of the amendment brought about subsequently, and that the finding of the learned Designated Court declining jurisdiction on the ground that Section 7 no longer exists on the statute book proceeds upon an incorrect appreciation of the settled principle of law.

9. Learned counsel for the Petitioner further submitted that, quite apart from the statutory compounding contemplated under Section 7 of the OPID Act, this Court is possessed of an independent and wider inherent jurisdiction under Section 482 Cr.P.C., preserved by Section 13 of the OPID Act itself, to prevent abuse of the process of any court and to secure the ends of justice, a jurisdiction already held to be maintainable on the facts of the present case by this Court's order dated 02.09.2023 in CRLMC No. 3846 of 2023. It was further submitted that allowing the trial to continue, when the disputes between parties stand fully settled and the complainant herself does not wish to press the matter further, would be a futile exercise which would occasion unnecessary wastage of the precious time of the learned Trial Court,

would cause needless embarrassment to the Appellants, and would ultimately, defeat rather than serve the interest of justice.

10. Additionally, it was pointed out by the learned counsel for the Petitioner that the learned Public Prosecutor, before the Designated Court, agreed to the factum of settlement and the receipt of payment by the complainant. It was further submitted by the learned counsel for the Petitioner that the objection of the learned Public Prosecutor to the effect that the benefit of Section 7 could not be extended merely because the amendment came subsequent to the filing of the charge-sheet is misconceived. Instead, the relevant enquiry is whether, on the date the offence is alleged to have been committed and the charge-sheet filed, the benefit of Section 7 was available to the Appellants, to which the answer, it was submitted, is in the affirmative.

11. In other to support his submissions, the learned counsel for the Appellants relied on ***Narinder Singh & Ors. v. State of Punjab & Anr.***, reported in ***(2014) 6 SCC 466***, wherein it has been explained, at paragraph 12, that a subtle distinction exists between the power of compounding conferred on a Court under Section 320 Cr.P.C., which is guided by the compromise between the parties and is available only where the offence falls within that provision, and the power to quash proceedings in exercise of inherent jurisdiction under Section 482

Cr.P.C., which is guided by whether the material on record shows that the ends of justice would justify such exercise of power, even though the consequence may be an acquittal or dismissal of the indictment. Reliance was also placed on the principles summarised at paragraph 29 of the said decision, to the effect that where a settlement is reached and a petition for quashing is founded thereon, the guiding factor for the High Court is to secure the ends of justice or to prevent abuse of the process of the court.

12. On the strength of the aforesaid contentions, the learned counsel for the Appellants submitted that the impugned order dated 20.05.2025 of the learned Presiding Officer, Designated Court under the OPID Act, Cuttack, be set aside.

CONTENTIONS OF THE RESPONDENTS

13. Heard Mr. Anil Kumar Nayak, learned counsel for the OPID and Mr. C. M. Singh, learned ASC. The learned counsel for the Respondents resisted the appeal initially on the ground that, at present, there exists no extant provision for compounding of offences under the OPID Act, since Section 7 thereof has been deleted by the Amendment Act of 2016, published in the official gazette. Therefore, as on 08.04.2025, being the date of settlement, no provision enabling compounding existed under the OPID Act and that the application filed by the Appellants before the

learned Designated Court invoking Section 7 was, therefore, rightly held not maintainable.

14. The learned counsel for the Respondents further contended that the offence, being one under Sections 420/34 IPC read with Section 6 of the OPID Act, is an economic offence committed against the society at large and is not confined to a single individual; that it is a serious offence incapable of being compounded; and that, having been instituted under a Special Act, it warrants a full-fledged trial rather than truncation by way of settlement. It was also submitted that mere refund of the amount alleged to have been misappropriated, effected after registration of the case, does not ipso facto wipe out the offence already committed, reliance in this behalf being placed on ***Anil Bhavarlal Jain & Anr. v. State of Maharashtra & Ors***., bearing ***SLP (Crl.) No. 10078 of 2023*** vide judgment dated 20.12.2024.

15. Next, the learned counsel for the Respondents submitted that trial in C.T. Case No. 34 of 2015 has already commenced and that witnesses examined have supported the case of the prosecution. Moreover, several other similarly placed persons are stated to have lodged separate FIRs against the Appellants, with as many as eleven cases said to be pending trial against them. The learned counsels also contended that in a connected matter arising from the same C.T. Case No. 34 of 2015, the

Appellants had earlier preferred CRLA No. 786 of 2018 challenging the order dated 08.12.2015 framing charge, which came to be disposed of as infructuous on 21.02.2023, by which date four witnesses already stood examined and that a separate application, CRLMC No. 69 of 2023, relating to C.T. Case No. 35 of 2015, was disposed of by judgment dated 27.07.2023, declining to quash the proceeding therein.

16. Learned counsel for the Respondents also raised an objection touching the maintainability of the appeal, submitting that the Appellants have furnished a false certificate to the effect that "the matter out of which the CRLA arises was never before this Hon'ble Court in any form", whereas the Appellants had earlier approached this Court by way of CRLA No. 786 of 2018 (disposed of on 21.02.2023) and CRLMC No. 3846 of 2023 (disposed of on 07.05.2025) and that the appeal, having been filed by suppressing these earlier proceedings, is liable to be dismissed on the ground that the Appellants have not approached this Court with clean hands.

17. Lastly, it was submitted that interim orders passed at the instance of the Appellants, on 07.03.2019 in CRLA No. 786 of 2018 and on 02.09.2023 in CRLMC No. 3846 of 2023, resulted in the trial being stalled since 2019, after examination of four witnesses, and that the Appellants took advantage of this stalling of the trial to settle with the

informant only in 2025, a conduct which, it was submitted, ought not to be viewed with favour by this Court. In such view of the matter, the learned counsel for the Respondents submitted before this Court that the present appeal be dismissed forthwith.

ANALYSIS OF THE COURT

18. Heard learned counsel for the Appellants and Respondents, perused the appeal memo along with the materials attached thereto, including the impugned order dated 20.05.2025, the agreement dated 08.04.2025, and the written submissions on behalf of the parties. On a conspectus of the aforesaid materials, the limited question which falls for consideration before this Court, is whether the subsequent omission of Section 7 of the OPID Act, by the amendment brought into force in the year 2016, could by itself, operate to deprive the Appellants of the then statutory right of seeking compounding in respect of the prosecution which had been instituted at a time when Section 7 was in force. The question assumes particular significance because the Designated Court, vide its impugned order dated 20.05.2025, while considering the application filed by the Appellants for compounding, declined to entertain the same principally on the ground that Section 7 of the OPID Act had subsequently been omitted from the statute.

19. Before proceeding to examine the aforesaid question on its merits, the objection as to the maintainability of the present proceeding also requires consideration. It is clearly borne from the record that this Court had earlier entertained CRLMC No.3846 of 2023 in relation to the very prosecution and, by order dated 07.05.2025, having taken note of the Appellants' reliance upon Section 7 of the OPID Act, granted them liberty to approach the learned Designated Court for appropriate relief in accordance with law. The present Appeal has been preferred against the consequential order dated 20.05.2025 passed by the learned Designated Court. More significantly, when the Appellants thereafter approached the Hon'ble Supreme Court in SLP (Crl.) No.8661 of 2025, the Hon'ble Supreme Court, by order dated 22.07.2025, expressly permitted the Appellants to assail the order dated 20.05.2025 before this Court and granted interim protection in the meanwhile. Likewise, the earlier CRLA No.786 of 2018 arose from an entirely different stage and issue, namely, the challenge to the order dated 08.12.2015 framing charge, and was disposed of as infructuous on 21.02.2023 after the trial had commenced and witnesses had already been examined. The present appeal, on the other hand, arises from the subsequent order dated 20.05.2025 of the Designated Court refusing to entertain the Appellants' application for compounding on the ground that Section 7 of the OPID Act had been

omitted. The subject matter and the cause of action giving rise to the two proceedings are, therefore, materially distinct. Likewise, the order dated 07.05.2025 in CRLMC No.3846 of 2023 did not adjudicate the present question on merits, rather, it directed the Appellants to first approach the Designated Court. In such circumstances, this Court is of the view that the maintainability of the present proceeding cannot reasonably be called into question on the ground that the Appellants had previously approached this Court.

20. Next, the objection of Respondents that the offence involved in the present matter, being an economic offence, affects the society at large and, as such, cannot be permitted to be compounded, also requires to be considered in its proper perspective. There can be no quarrel with the settled principle that, while exercising inherent jurisdiction under Section 482 Cr.P.C, on the basis of a settlement, the Court must have due regard to the nature and gravity of the offence and its wider societal implications. In ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. v. State of Gujarat & Anr.***, reported in ***(2017) 9 SCC 641***, the Hon'ble Supreme Court, at paragraph 16, particularly paragraphs 16.8 to 16.10, recognised the distinction between disputes having an essentially private or civil flavour and economic offences involving the financial and economic well-being of the State. The said

principle has also been reiterated in ***State of Madhya Pradesh v. Laxmi Narayan & Ors.***, reported in ***(2019) 5 SCC 688***, particularly paragraph 15. However, those principles do not, by themselves, answer the question arising in the present appeal, especially since the present proceeding is not, at this stage, an adjudication upon the ultimate question whether the criminal proceedings should be quashed merely because the complainant has entered into a settlement, nor is this Court, in the present appeal, called upon to finally determine whether the Appellants satisfy all the requirements for being permitted to compound the offence.

The central question before this Court is much narrower, as in, whether the subsequent omission of Section 7 of the OPID Act could, by itself, deprive the Appellants of the statutory mechanism which was available when the offence was committed and the prosecution instituted. The consideration of the nature and gravity of the offence remains relevant to the Designated Court while deciding whether permission for compounding ought ultimately to be granted.

21. Adverting now to the primary issue of the Designated Court declining to entertain the condonation application filed by the Petitioner on the limited ground mentioned hereinabove, the same is required to be considered keeping in view the settled principle that the legal

consequences attaching to an offence are ordinarily to be determined with reference to the law governing the offence at the relevant point of time. The Hon'ble Supreme Court has had occasion to consider the precise question as to whether a subsequent amendment taking away the facility of compounding can be applied to an offence which was compoundable at the time it was committed. In ***Md. Abdul Sufan Laskar & Ors. v. State of Assam***, reported in ***(2008) 9 SCC 333***, the Appellants had been convicted under Section 324 of the IPC. At the time when the offence was committed, Section 324 IPC was compoundable with the leave of the Court. Subsequently, by the 2005 Amendment to the Cr.P.C, the relevant entry was deleted and the offence was made non-compoundable with effect from 23.06.2006. The Hon'ble Supreme Court had the occasion to consider the effect of the subsequent amendment in the context of an offence committed much earlier. In paragraph 16, the Hon'ble Supreme Court noticed that by the 2005 Amendment Act the entry relating to Section 324 IPC had been deleted and that the offence had thereby ceased to be compoundable. However, later, the Apex Court allowed the appeal, set aside the conviction and sentence passed by the Court below, and observed;

> "***16.*** *It is no doubt true as stated by the learned counsel for the appellants even <u>at the time of preliminary hearing of this</u>*

matter that by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) the above entry has been deleted. In other words, an offence of voluntarily causing hurt by dangerous weapons or means punishable under Section 324 IPC is no more compoundable. The Amendment Act of 2005 came into force from 23-6-2006.

17. *As we have already noted, according to the prosecution, the appellants had committed the offence on 15-6-1995. In view of the above fact, in our opinion, Act 25 of 2005 has no application to the facts of the case. We, therefore, see no ground to refuse permission as sought by the parties who have compromised the offence which was compoundable under the Code as it stood in 1995. If it is so, compounding can be permitted and the accused (the appellants) can be acquitted.*

18. *For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compounded by compromise between the parties and there is no illegality therein, such compounding can be permitted by the Court. The appellants are, hence, entitled to acquittal.*

19. *The order of conviction and sentence recorded by all courts is hereby set aside and the appellants are ordered to be acquitted of the charges levelled against them.*"

(Emphasis Supplied)

Accordingly, the Supreme Court permitted the compounding of the offence. Thus, the material consideration for determining the

applicability of the subsequent amendment was the law governing the offence when the offence was committed, and not merely the law which happened to be in force when the application for compounding came to be considered.

22. In a similar vein, regard may also be had to ***Hirabhai Jhaverbhai v. State of Gujarat & Ors.***, reported in ***(2010) 6 SCC 688***, the offence under Section 324 IPC had been committed on 23.07.1986 when the offence was compoundable with the permission of the Court. However, by the time the matter came before the Hon'ble Supreme Court, the 2005 amendment to the Cr.P.C had come into force and Section 324 IPC had been made non-compoundable. In such background, the Apex Court observed that:

> "***4.*** *From the record it is evident that the incident in question took place on 23-7-1986. Pursuant to the order dated 29-1-2010 passed by this Court in the instant matter, the complainant and the injured are impleaded as respondents and are represented through their learned counsel. They have filed an affidavit stating that the disputes between the parties have been settled with the intervention of respectable persons of the society. They have also expressed their willingness to compound the offence.*
>
> ***5.*** *This Court finds that after coming into force of the Code of Criminal Procedure (Amendment) Act, 2005 from 23-6-2006 the offence under Section 324 IPC is made non-compoundable. However, in this case the offence under Section 324 IPC was*

committed on 23-7-1986 on which date it was compoundable with the permission of the court. As the Code of Criminal Procedure (Amendment) Act, 2005 is not applicable to the facts of the case, the offence under Section 324 IPC would be compoundable with the permission of the court.

6. *In view of the statement made by Respondents 2 to 4 in their affidavit and having regard to the facts and circumstances of the case, permission to compound the offence deserves to be granted to the original complainant and the injured.*

7. *Hence, the appeal is allowed. The two judgments impugned in the appeal are set aside. The injured complainant and two other injured are permitted to compound the offence punishable under Section 324 IPC. In view of sub-section (8) of Section 320 of the Code of Criminal Procedure, the composition of offence under Section 324 IPC shall have the effect of an acquittal of the appellant with whom the offence has been compounded.*"

(**Emphasis Supplied**)

Given that the Hon'ble Supreme Court eventually, permitted the compounding of the offence and set aside the judgments under challenge, the significance of ***Hirabhai Jhaverbhai*** (*supra*) lies in the fact that the Apex Court did not treat the subsequent alteration of the law as determinative merely because the application for compounding was being considered after the amendment. Rather, the Hon'ble Supreme Court expressly connected the availability of the right to compound with the legal position on the date on which the offence had been committed.

The later amendment making the offence non-compoundable was held inapplicable to an offence which had already been committed at a time when the law permitted its composition.

23. The same approach is discernible in ***Manoj & Anr. v. State of Madhya Pradesh***, reported in ***(2008) 9 SCC 116*** and ***Mathura Singh & Ors. v. State of U.P.***, reported in ***(2009) 13 SCC 420***, wherein the Hon'ble Supreme Court upheld the aforesaid proposition that since the alleged provision in question was included within the scheme of compounding of offences at the point of time when the offence was alleged to have been committed, it would be open to the accused to file an application for compounding of offences. Although the aforesaid authorities were rendered in the context of Section 320 of the Cr.P.C, and the present case concerns the provision for compounding contained in the OPID Act, nevertheless, the principle which emerges from the aforesaid decisions is of general application, i.e., where the legislature has conferred upon an accused a statutory facility of compounding an offence, the subsequent withdrawal of that facility/provision does not, in the absence of a clear legislative indication to the contrary, automatically render inapplicable the legal consequences which had already attached under the earlier statutory regime.

24. In a similar vein, in ***Pravat Chandra Mohanty v. State of Odisha***, reported in ***(2021) 3 SCC 529***., wherein Section 324 of the IPC was compoundable on the date of commission of the offence but had subsequently been made non-compoundable by the Cr.P.C Amendment Act, 2005. In paragraph 28, the Hon'ble Supreme Court expressly accepted the submission that "on the date when offence was committed" the offence was compoundable, notwithstanding the subsequent amendment, and proceeded to examine the request for compounding on that footing. Although, ultimately, permission to compound was declined on account of the nature and effect of the particular offence, the Hon'ble Apex Court, at paragraph 30, clarified that the availability of the statutory provision for compounding and the Court's discretion to grant the permission for compounding are two distinct questions. Thus, the subsequent amendment may govern the exercise of the Court's discretion where applicable, but it does not retrospectively obliterate the statutory facility to seek composition which existed when the offence was committed. Paragraphs 28 and 30 of the aforesaid decision are quoted herewith;

> **"*28.*** *The present is a case where the accused has already been convicted for offence under Section 324 IPC. By the CrPC (Amendment) Act, 2005, offence under Section 324 IPC has been made non-compoundable offence. Prior to the aforesaid*

amendment, offence under Section 324 was compoundable. The learned counsel for the appellants is right in his submissions that on the date when the offence was committed i.e. 4-5-1985/5-5-1985, the offence under Section 324 IPC was compoundable. We, thus, need to examine as to whether in the present case, the request of the appellants to which the learned counsel appearing for the legal representative of the deceased have also agreed need to be accepted and this Court may permit compounding of offence under Section 324 IPC.

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30. *The grant of leave as contemplated by sub-section (5) of Section 320 is not automatic nor it has to be mechanical on receipt of request by the appellant which may be agreed by the victim. The statutory requirement makes it a clear duty of the court to look into the nature of the offence and the evidence and to satisfy itself whether permission should be or should not be granted. The administration of criminal justice requires prosecution of all offenders by the State.*"

(Emphasis Supplied)

25. The aforesaid conclusion is further fortified by Section 6 of the General Clauses Act, 1897. Section 6(b) provides that repeal of an enactment does not affect the previous operation of the enactment or anything duly done or suffered thereunder. Similarly, Section 6(c) protects rights, privileges, obligations and liabilities acquired, accrued or incurred under the repealed enactment and Section 6(e) preserves

investigations, legal proceedings and remedies in respect of such matters, subject, of course, to a different intention appearing from the repealing legislation. The Hon'ble Supreme Court in ***State of Punjab v. Mohar Singh Pratap Singh***, reported in ***AIR 1955 SC 84***, while explaining the operation of Section 6 of the General Clauses Act, 1897, observed that where an enactment is repealed and fresh legislation is enacted on the same subject, the Court must examine the new legislation to ascertain whether it manifests an intention to destroy the rights and liabilities preserved by Section 6. The mere absence of an express saving provision is not by itself decisive. The relevant enquiry is whether the subsequent legislation manifests an intention incompatible with the continued operation of the earlier consequences. The relevant paragraphs of the aforesaid pronouncement are reproduced hereinbelow;

> **"*13.*** *But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the matter, it may be presumed that the legislature did not deem it fit to keep alive the liability incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But*

when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

14. *The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case.*"

(Emphasis Supplied)

26. The principle enunciated in ***Mohar Singh Pratap Singh*** (*supra*) has been consistently reiterated in later decisions of the Hon'ble Supreme Court. In ***Commissioner of Income Tax, U.P. v. Shah Sadiq & Sons***, reported in ***(1987) 3 SCC 516***, referring to Section 6(c) of the General Clauses Act, 1897, the Apex Court observed that a right which has accrued and become vested continues to be capable of being enforced notwithstanding the repeal of the enactment under which such

right accrued, unless the repealing enactment takes away that right expressly or by necessary implication (see paragraph 15 thereof).

27. It may be noted that an earlier view had been expressed by a Constitution Bench of the Hon'ble Supreme Court in ***Rayala Corporation (P) Ltd. & Anr. v. Director of Enforcement***, reported in ***(1969) 2 SCC 412***, and reiterated in ***Kolhapur Canesugar Works Ltd. & Anr. v. Union of India & Ors.***, reported in ***(2000) 2 SCC 536***, that Section 6 of the General Clauses Act, in terms, operates in relation to a "repeal" and would not apply to a mere "omission". The correctness and scope of this aspect of ***Rayala Corporation*** (*supra*) and ***Kolhapur Canesugar Works*** (*supra*) came to be examined by the Hon'ble Supreme Court in ***Fibre Boards (P) Ltd., Bangalore v. Commissioner of Income Tax, Bangalore***, reported in ***(2015) 10 SCC 333***. At paragraph 31, the Court clarified that the observation in *Rayala Corporation* to the effect that an "omission" would not be included within the expression "repeal" could not be regarded as its ratio decidendi and was, in that context, in the nature of an obiter dicta. Next, at paragraph 33, the Hon'ble Apex Court further noticed Section 6-A of the General Clauses Act, which expressly contemplates repeal by way of omission, and held that the expression "repeal" in Sections 6 and 24 would consequently include repeal by express omission. Significantly, at paragraph 35, it was

observed that even an implied repeal of a statute would fall within the expression "repeal" in Section 6 of the General Clauses Act and that repeals may take any form, so long as the statute or a part thereof is obliterated. The relevant paragraphs of ***Fibre Boards (P) Ltd.*** (*supra*) are quoted hereinbelow for better appreciation.

> ***"31.*** *First and foremost, it will be noticed that two reasons were given in Rayala Corpn. (P) Ltd. [(1969) 2 SCC 412] for distinguishing the Madhya Pradesh High Court judgment [1958 SCC OnLine MP 149 : AIR 1959 MP 93] . Ordinarily, both reasons would form the ratio decidendi for the said decision and both reasons would be binding upon us. But we find that once it is held that Section 6 of the General Clauses Act would itself not apply to a rule which is subordinate legislation as it applies only to a Central Act or Regulation, it would be wholly unnecessary to state that on a construction of the word "repeal" in Section 6 of the General Clauses Act, "omissions" made by the legislature would not be included. Assume, on the other hand, that the Constitution Bench had given two reasons for the non-applicability of Section 6 of the General Clauses Act. In such a situation, obviously both reasons would be ratio decidendi and would be binding upon a subsequent Bench. However, once it is found that Section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word "repeal", an "omission" would not be included. We are, therefore, of the view that the second so-called ratio of the Constitution Bench in Rayala Corpn. (P) Ltd. [(1969) 2 SCC*

412] cannot be said to be a ratio decidendi at all and is really in the nature of obiter dicta.

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33 [Ed. : Para 33 corrected vide Official Corrigendum No. F.3/Ed.B.J./51/2015 dated 5-11-2015.] . *A reading of this Section would show that a repeal by an amending Act can be by way of an express omission. This being the case, obviously the word "repeal" in both Section 6 and Section 24 would, therefore, include repeals by express omission. The absence of any reference to Section 6-A, therefore, again undoes the binding effect of these two judgments on an application of the per incuriam principle. [In Mamleshwar Prasad v. Kanhaiya Lal, (1975) 2 SCC 232 : (1975) 3 SCR p. 834, Krishna Iyer, J., succinctly laid down what is meant by the "per incuriam" ...*

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35. *The two later Constitution Bench judgments [(1969) 2 SCC 412] , [(2000) 2 SCC 536] also did not have the benefit of the aforesaid exposition of the law. It is clear that even an implied repeal of a statute would fall within the expression "repeal" in Section 6 of the General Clauses Act. This is for the reason given by the Constitution Bench in M.A. Tulloch & Co. [(1964) 4 SCR 461 : AIR 1964 SC 1284] that only the form of repeal differs but there is no difference in intent or substance. If even an implied repeal is covered by the expression "repeal", it is clear that repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression "repeal" in Section 6 of the General Clauses Act."*

(Emphasis Supplied)

28. This position was thereafter reiterated in ***Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise***, reported in ***(2016) 3 SCC 643***, wherein the Hon'ble Supreme Court observed that the expressions "delete" and "omit" may be used interchangeably and that the distinction is one of form rather than substance. The Court further explained that an "omission" is a form of abrogation of an enactment or a portion thereof. The position was subsequently reaffirmed later in ***Har Naraini Devi v. Union of India***, bearing ***Civil Appeal No.22957 of 2017***, decided on 20.09.2022, particularly paragraphs 24, wherein the Hon'ble Supreme Court, relying upon ***Shree Bhagwati Steel Rolling Mills*** (*supra*), observed that repeal is to be treated similarly as an omission and that Section 6 of the General Clauses Act applies equally to an omission. In paragraph 25, the Apex Court further held that the effect of a deletion could operate only in respect of matters arising after the date of deletion where rights had already crystallised under the earlier provision, observing that the deletion could not have retrospective effect. The relevant paragraphs are quoted hereinbelow for better appreciation. The relevant paragraphs are quoted hereinbelow for better appreciation;

> "***24.*** *By virtue of Section 6 of the General Clauses Act, the repeal of an enactment would not affect the previous operation of such an enactment. In* ***Shree Bhagwati Steel Rolling Mills v.***

CCE[13]*, this Court has held that repeal is to be treated similarly as an omission and Section 6 of the General Clauses Act would apply equally to an omission as it would apply to a repeal. On account of Sections 6(b) and 6(c) of General Clauses Act, the omission of Section 4(2) of 1956 Act cannot affect the previous operation of the said Section 4(2) …*

25. *The deletion of Section 4(2) took place w.e.f 09.09.2005. Therefore, the effect of the deletion can only be in respect of successions which opened on or after 09.09.2005. This is because under Section 6(b) and 6(c) of the General Clauses Act repeal cannot affect the previous operation of any enactment so repealed and cannot affect the previous operation of any enactment so repealed and cannot affect any right which may have been acquired or accrued. In the present case, it is to be held that succession has opened prior to 09.09.2005, the rights of the descendants in terms of Section 50 became crystallized on account of the said Section read with Section 4(2) of the 1956 Act. Therefore, the deletion of Section 4(2) cannot have retrospective effect.*"

(**Emphasis Supplied**)

29. The principle against retrospective deprivation of an accrued statutory entitlement also finds expression in ***Hitendra Vishnu Thakur & Ors. v. State of Maharashtra & Ors.***, reported in ***(1994) 4 SCC 602***, particularly paragraph 26. The Hon'ble Supreme Court held, inter alia, that a statute affecting substantive rights is presumed to be prospective

unless made retrospective either expressly or by necessary intendment, and that a statute which, though procedural in character, adversely affects vested rights is likewise to be construed prospectively. Paragraph 26 of the decision is reproduced hereinbelow;

> ***"26.*** *The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:*
>
> > ***(i)*** *A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.*
> >
> > ***(ii)*** *Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.*
> >
> > ***(iii)*** *Every litigant has a vested right in substantive law but no such right exists in procedural law.*

(iv) *A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.*

(v) *A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."*

(Emphasis Supplied)

While, in the present case, the right of compounding under Section 7 of the OPID Act cannot be equated in every respect with the vested right of appeal considered in the authorities on that subject, the principle is nevertheless instructive, i.e., once the law attaches a statutory consequence to the commission of the offence, a subsequent amendment which takes away that consequence cannot be applied to the earlier occurrence unless the legislative intention to do so is manifested with the requisite clarity.

30. The combined effect and legal position of the aforesaid authorities, therefore, admits of little ambiguity inasmuch as, where a statutory provision is omitted by a subsequent amendment, such omission does not, by itself, take the matter outside the protective operation of Section 6 of the General Clauses Act. The relevant enquiry in such a scenario is whether a different intention, either expressly or by

necessary implication, appears from the amending legislation. In the present case, Section 7 of the OPID Act was in force when the alleged offences were committed and when the prosecution was instituted (i.e. the F.I.R was registered and the Chargesheet was filed). This implies that the provision for seeking compounding was available under the then statutory regime governing the prosecution. Ergo, the omission of Section 7, after the 2016 amendment to the OPID Act, cannot be viewed merely by reference to the date on which the application for compounding happened to be presented and, in the absence of a legislative implication, either express or implied, evincing an intention to retrospectively extinguish that benefit in respect of offences already committed and prosecutions already instituted, such omission cannot be construed as divesting the Appellants of the benefit of the earlier statutory regime.

Having said that, it is pertinent to clarify that the right available to the Appellants under Section 7 of the OPID Act, as it then stood, was not in the nature of an unqualified right to have their offences compounded. Rather, the provision conferred a statutory right to seek compounding, subject to the conditions prescribed therein and the permission of the Designated Court. Thus, what accrued to the Appellants by reason of the offence having been committed and the

prosecution having been instituted while Section 7 was in force was the right to invoke the statutory mechanism for compounding, and not an absolute right to have the offence compounded. Whether the requisite conditions for actually permitting compounding were satisfied remained a matter to be determined by the competent authority and the Designated Court in accordance with the applicable legal principles.

31. So far as the case at hand is concerned, it is not in dispute that the F.I.R was registered on 23.06.2015, the Chargesheet was submitted on 29.09.2015, that Section 7 of the OPID Act was omitted via an amendment which was published in the official Gazette on 11.11.2016, that the settlement between the parties was arrived at on 08.04.2025, and the application for compounding of offences was rejected by the Designated Court on 20.05.2025. On a perusal of the impugned order at Annexure-1 it is evident that the rejection order proceeds on the footing that, since Section 7 of the OPID Act had subsequently been omitted by the 2016 amendment, the Designated Court could not entertain the Appellants' application for compounding.

32. It is also of significance that the 2016 amending legislation merely states that Section 7 "shall be omitted"; it contains no transitional provision expressly declaring that pending prosecutions, or offences committed during the currency of Section 7, shall thereafter be governed

by the omission. The legislative material accompanying the amendment explains the policy behind the deletion, namely, to make the penal provision more stringent and to remove the perceived inconsistency between Section 6 and the compounding provision. That legislative purpose explains the removal of the compounding provision for the future. It does not, by itself, answer the distinct question whether a benefit which had already become available in respect of an earlier offence was intended to be retrospectively withdrawn. In the absence of an express or necessarily implied provision addressing such past offences or pending prosecutions, Section 6 of the General Clauses Act continues to operate in its ordinary field.

33. Applying the principles enumerated in the preceding paragraphs to the facts of the present case, specifically the sequence of events detailed hereinabove, it is clear that the question of whether to entertain the application for compounding of offences cannot, comprehensively, be answered merely by looking at the statute as it stood on the date on which the application was considered. Instead, the Court was required to examine the legal position governing the alleged offence and the prosecution when the relevant statutory provision was in force and, thereafter, to consider whether the subsequent amendment manifested an intention to retrospectively take away the consequences attaching to the

earlier statutory regime. Significantly, the impugned order does not appear to rest upon an examination of the saving effect, if any, of the General Clauses Act, nor does it identify any provision in the amending legislation which expressly or by necessary implication declares that pending prosecutions in respect of offences committed or proceedings instituted while Section 7 was in force would stand deprived of the benefit of the earlier provision. The mere fact that Section 7 was omitted subsequently cannot, by itself, furnish a sufficient basis for refusing to entertain the application for compounding of offences.

34. At this stage, it is important to delineate the precise scope of the present adjudication. This Court is not called upon, in the present appeal, to finally determine whether the appellants are entitled to have the offence compounded. Nor is it necessary, for deciding the present question, to examine whether the settlement entered into between the Appellants and the complainant meets every requirement otherwise prescribed by law. Those questions may appropriately be considered by the Designated Court in the first instance. The limited question before this Court is whether the Designated Court was justified in declining to entertain the application on the sole ground that Section 7 of the OPID Act had subsequently been omitted. In view of the principles noticed

above, this Court is of the considered view that the answer must be in the negative.

35. As such, for the reasons stated hereinabove, the appeal succeeds. The impugned order dated 20.05.2025, at Annexure-1, passed by the learned Designated Court, OPID, in C.T. Case No. 34 of 2015, insofar as it refuses to entertain the Appellants' application for compounding solely on the ground that Section 7 of the OPID Act had subsequently been omitted, cannot be sustained and, is therefore, set aside. Consequently, the matter is remitted to the learned Designated Court for consideration of the Appellants' application for compounding afresh in light of the principles discussed hereinabove.

36. Accordingly, the appeal is allowed. However, there shall be no order as to costs.

(Aditya Kumar Mohapatra)

Judge

Orissa High Court, Cuttack

The 31st October, 2026/ S.K. Rout, Jr. Stenographer

Signature Not Verified
Digitally Signed
Signed by: SANTANU KUMAR ROUT
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 09-Nov-2026 11:31:05