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GIAN SINGH

v.

STATE OF PUNJAB & ANR

(Petition(s) for Special Leave to Appeal (Crl) No.8989 of  
2010)

B

NOVEMBER 23, 2010

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

*Code of Criminal Procedure, 1973:*

C

*s.320 – Compounding of offences – Prayer for permitting  
compounding of offences punishable u/ss 420 and 120-B IPC  
– HELD: Offence punishable u/s 420 is compoundable with  
permission of court, but offence punishable u/s 120-B is a  
separate offence and since it is non-compoundable, Court  
cannot permit it to be compounded – Court cannot amend the  
statutes and it must maintain judicial restraint in this regard  
– It is the Legislature alone which can amend s.320 – The  
decision of the Court in the cases of B.S. Joshi, Nikhil  
Mechant and Manoj Sharma require reconsideration by a  
larger Bench – The matter be placed before the chief Justice  
of India for constituting a larger Bench.*

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F

*B.S.Joshi vs. State of Haryana 2003 ( 2 ) SCR 1104 =  
(2003) 4 SCC 675; Nikhil Merchant vs. Central Bureau of  
Investigation and Another 2008 (12 ) SCR 236 = (2008) 9  
SCC 677; and Manoj Sharma vs. State and Others 2008  
(14 ) SCR 539 = (2008) 16 SCC 1 – referred to.*

**Case Law Reference:**

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|                   |             |        |
|-------------------|-------------|--------|
| 2003 (2) SCR 1104 | referred to | para 3 |
| 2008 (12) SCR 236 | referred to | para 3 |
| 2008 (14) SCR 539 | referred to | para 3 |

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CRIMINAL ORIGINAL JURISDICTION : SLP (Criminal) No. 8989 of 2010. A

From the Order and Judgment dated 17.09.2010 of the High Court of Punjab and Haryana at Chandigarh in CRM No. M-27367 of 2010. B

Rajiv Kataria (for Delhi Law Chambers) for the Petitioner.

The following order of the Court was delivered

**ORDER** C

Heard learned counsel for the petitioner.

The petitioner has been convicted under Section 420 and Section 120B, IPC by the learned Magistrate. He filed an appeal challenging his conviction before the learned Sessions Judge. While his appeal was pending, he filed an application before the learned Sessions Judge for compounding the offence, which, according to the learned counsel, was directed to be taken up along with the main appeal. Thereafter, the petitioner filed a petition under Section 482, Cr.P.C. for quashing of the FiR on the ground of compounding the offence. That petition under Section 482 Cr.P.C. has been dismissed by the High Court by its impugned order. Hence, this petition has been filed in this Court. D E

Learned counsel for the petitioner has relied on three decisions of this Court, all by two Judge Benches. They are *B.S. Joshi vs. State of Haryana* (2003) 4 SCC 675; *Nikhil Merchant vs. Central Bureau of Investigation and Another* (2008) 9 SCC 677; and *Manoj Sharma vs. State and others* (2008) 16 SCC 1. In these decisions, this Court has indirectly permitted compounding of non-compoundable offences. One of us, Hon'ble Mr. Justice Markandey Katju, was a member to the last two decisions. F G

Section 320, Cr.P.C. mentions certain offences as H

- A compoundable, certain other offences as compoundable with the permission of the Court, and the other offences as non-compoundable vide Section 320 (7).

- B Section 420, IPC, one of the counts on which the petitioner has been convicted, no doubt, is a compoundable offence with permission of the Court in view of Section 320, Cr.P.C. but Section 120B IPC, the other count on which the petitioner has been convicted, is a non-compoundable offence. Section 120B (criminal conspiracy) is a separate offence and since it is a non-compoundable offence, we cannot permit it to be compounded.

- C The Court cannot amend the statute and must maintain judicial restraint in this connection. The Courts should not try to take over the function of the Parliament or executive. It is the legislature alone which can amend Section 320 Cr. P.C.

- D We are of the opinion that the above three decisions require to be re-considered as, in our opinion, something which cannot be done directly cannot be done directly cannot be done indirectly. In our, prima facie, opinion, non compoundable offences cannot be permitted to be compounded by the Court, whether directly or indirectly. Hence, the above three decisions do not appear to us to be correctly decided.

- F It is true that in the last two decisions, one of us, Hon'ble Mr. Justice Markandey Katju, was a member but a Judge should always be open to correct his mistakes. We feel that these decisions require re-consideration and hence we direct that this matter be placed before a larger Bench to reconsider the correctness of the aforesaid three decisions.

- G Let the papers of this case be placed before Hon'ble Chief Justice of India for constituting a larger Bench.

R.P.

Matter referred to larger Bench.