

Present: Asif Saeed Khan Khosa, Ijaz ul Ahsan and Syed Mansoor Ali Shah, JJ

SUO MOTU CASE Re: the issue as to whether compounding of an offence under section 345,

Cr.P.C. amounts to acquittal of the accused person or not.

Suo Motu Case No. 3 of 2017, decided on 27th June, 2018.

(a) Criminal Procedure Code (V of 1898)---

---Ss. 345(6) & 338-E(1), first proviso---Penal Code (XLV of 1860), Chapt. XVI, [Ss.299 to 338-H]---Waiver or compounding of offence---Compromise with legal heirs---Effect---As a result of a successful and complete compounding of a compoundable offence in a case of Ta'zir under S.345, Cr.P.C., with permission or leave of the relevant court where required, an accused person or convict was to be acquitted by the relevant court which acquittal shall erase, efface, obliterate and wash away his alleged or already adjudged guilt in the matter apart from leading to setting aside of his sentence or punishment, if any---Obliteration and removal of the offence and its erasing and effacing from the record as a result of compounding had the effect of absolving the accused person or convict of the act, acquittal from the charge and clearance from the actual guilt---Acquittal or the effects of it in criminal law were necessarily relevant to guilt of a person and criminal jurisprudence and law did not envisage or contemplate removal of punishment while impliedly maintaining a person's guilt---All the offences affecting human body including murder and causing of hurt falling in Chap. XVI of the Pakistan Penal Code, 1860 were capable of being waived or compounded.

Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan PLD 2010 SC 695; English Synonymes Explained In Alphabetical Order; with Copious Illustrations and Examples by George Crabb, A. M. (published by William Clowes and Sons, London, 6th Edition, 1837); English Synonymes Explained In Alphabetical Order; with Copious Illustrations by George Crabb, A. M. (published by LEIPSIC, a New Edition, 1839); Crabb's English Synonymes by George Crabb, A. M. (published by Grosse and Dunlap Publishers, New York, 1917) and Webster's New International Dictionary of the English Language by William Allan Neilson, Thomas A. Knott, Paul W. Carhart (published by G. & C. Merriam Company Publishers, 2nd Edition, 1957) ref.

(b) Criminal Procedure Code (V of 1898)---

---S. 345---Compounding of offence---Principles.

Following are the principles relating to compounding of offence;

- (i) A compounding could take place during the trial or during the pendency of an appeal or a revision petition and it could take place even before the case had reached the trial court for trial.
- (ii) A complete compounding fulfilling the requirements of sub-section (1) or (2) of section 345, Cr.P.C., as the case may be, could not be withdrawn or resiled from by any party at any later stage because it had already created the effect of an acquittal of the accused person.
- (iii) Composition of a compoundable offence not requiring permission of the court deprived the court of its jurisdiction to try the case or ousted the jurisdiction of the court to try the offence and the court had no other option but to acquit the accused person.
- (iv) Composition of a compoundable offence not requiring permission of the court and grant of permission or leave to compound by the relevant court in cases where such permission or leave was required resulted in immediate acquittal of the accused person.
- (v) In a case where a court had already convicted a person of a compoundable offence and had held him guilty, no compounding of the offence by the victim or his heirs with the convict could take

effect or could be said to be successful or complete unless the relevant appellate or revisional court granted leave to compound or allowed the proposed composition---Matter of granting or refusing leave to compound and allowing or disallowing the same laid in the discretion of the relevant court and before taking a decision in that regard the court concerned had to apply its judicial mind to the facts and circumstances of the case in their totality and also to consider desirability or otherwise of granting permission in that respect---Court had to keep in mind the spirit of the law and the requisite permission or leave to compound may ordinarily not be withheld or refused unless the facts and circumstances of the case persuade the relevant court otherwise---Composition of a compoundable offence was a concession extended by the legislature and also by the religion of Islam to the victims and their heirs and the same may not lightly be taken away or whittled down by the courts.

Kumarasami Chetty v. Kuppusami Chetty and others AIR 1919 Madras 879(2); Ram Richpal v. Mata Din and another AIR 1925 Lahore 159; Jhangtoo Barai and another v. Emperor (AIR 1930 Allahabad 409; Dharichhan Singh and others v. Emperor AIR 1939 Patna 141; Mt.Rambai wife of Bahadursingh v. Mt. Chandra Kumari Devi AIR 1940 Nagpur 181; Godfrey Meeus v. Simon Dular AIR (37) 1950 Nagpur 91; Prithvi Bhagat and another v. Birju Sada AIR 1962 Patna 316 and Naseem Akhtar and another v. The State PLD 2010 SC 938 ref.

In attendance

Syed Nayyab Hussain Gardezi, Assistant Attorney-General for Pakistan.

Tariq Mehmood Jahangiri, Advocate-General, Islamabad.

Qasim Ali Chauhan, Additional Advocate-General, Punjab.

Shehryar Qazi, Additional Advocate-General, Sindh.

Zahid Yousaf Qureshi, Additional Advocate-General, Khyber Pakhtunkhwa.

Ayaz Khan Swati, Additional Advocate-General, Balochistan.

Date of hearing: 27th June, 2018.

JUDGMENT

ASIF SAEED KHAN KHOSA, J.---One Waheed Ahmad had allegedly murdered a person named Tariq Hussain on 05.06.2007 in a village in the area of Police Station Mangla Cantonment, District Jhelum and for committing the said offence he was booked in case FIR No. 68 registered at the said Police Station on the same day for an offence under section 302 of the Pakistan Penal Code, 1860 (P.P.C.). After a regular trial the said Waheed Ahmad was convicted by a learned Additional Sessions Judge, Jhelum on 19.02.2009 for an offence under section 302(b), P.P.C. and was sentenced to death as Ta'zir and to pay a sum of Rs. 1,00,000/- to the heirs of the deceased by way of compensation under section 544-A of the Code of Criminal Procedure, 1898 (Cr.P.C.) or in default of payment thereof to undergo simple imprisonment for six months. The said Waheed Ahmad challenged his conviction and sentence before the Lahore High Court, Rawalpindi Bench, Rawalpindi through Criminal Appeal No. 75 of 2009 which was heard by a learned Division Bench of the said Court along with Murder Reference No. 20/RWP of 2009 seeking confirmation of the sentence of death and vide judgment dated 22.05.2012 the appeal was dismissed, the conviction and sentence were upheld and the sentence of death was confirmed. The said Waheed Ahmad then filed Criminal Petition for Leave to Appeal No. 216 of 2012 before this Court wherein leave to appeal was granted by this Court on 06.07.2012 in order to reappraise the evidence in the interest of safe administration of criminal justice. As a result of grant of leave to appeal Waheed Ahmad preferred Criminal Appeal No. 328 of 2012 before this Court and during the pendency of that appeal Criminal Miscellaneous Application No. 185 of 2017 was filed seeking acquittal of the convict-appellant on the basis of a compromise with the heirs of Tariq Hussain

deceased and the matter of compromise was referred by this Court to the learned District and Sessions Judge, Jhelum for verification. The report dated 27.02.2017 submitted by the learned District and Sessions Judge, Jhelum in that regard confirmed the fact that a genuine, voluntary and complete compromise between the parties had been effected, the heirs of Tariq Hussain deceased had forgiven the convict-appellant, had waived their right of Qisas and had not claimed any Diyat in that respect. After going through the said report a 3-member Bench of this Court comprising of our learned brothers Amir Hani Muslim, Qazi Faez Isa and Sardar Tariq Masood, JJ. unanimously accepted Criminal Miscellaneous Application No. 185 of 2017 on 21.03.2017 and allowed the compromise between the parties but their lordships differed on how the main appeal was to be disposed of upon acceptance of the compromise. Writing for the majority Sardar Tariq Masood, J. disposed of the appeal in the following terms and Amir Hani Muslim, J. agreed with his lordship:

"In this view of the matter, Criminal Miscellaneous Application No. 185 of 2017 filed under Section 345, Cr.P.C. is accepted and the compromise arrived at between the parties is allowed. As according to subsection (6) of Section 345 of the Code of Criminal Procedure, 1898, the composition of an offence shall have the effect of an acquittal, hence Criminal Appeal No. 328 of 2012 is allowed, the sentence of Waheed Ahmad (appellant) recorded and upheld by the courts below is set aside and he is acquitted of the charges on the basis of the compromise. He shall be released from jail forthwith if not required to be detained in connection with any other case."

Qazi Faez Isa, J., however, wrote a separate note on that occasion and the said note read as follows:

"Whilst I agree with my learned brother that the application under section 345(6) of the Code of Criminal Procedure ("the Code") be accepted, I most respectfully cannot bring myself to agree that the convict/appellant be "acquitted of the charges on the basis of the compromise". Subsection (6) of section 345 of the Code does not envisage an acquittal, as it provides:

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

2. The appellant was convicted by the Additional Sessions Judge, Jhelum, under section 302(b) of the Pakistan Penal Code ("P.P.C.") for the murder of Tariq Hussain, and was sentenced to death. The Trial Court sent the Murder Reference to the Lahore High Court for confirmation under section 374 of the Code whilst the appellant/convict preferred an appeal under section 410 of the Code. The High Court dismissed the appeal of the appellant, confirmed the Murder Reference and the sentence of death awarded to the appellant/convict. The appellant then preferred a criminal petition for leave to appeal before this Court, which granted leave, "to reappraise the evidence available on record in the interest of safe administration of criminal justice". However, during the pendency of this appeal a compromise was effected by the appellant/convict with the legal heirs of the deceased.

3. Section 345 of the Code enables compounding of offences and sets out the methodology thereof. It mentions the offences punishable under the P.P.C. which can be compounded either before or after an accused is convicted. The table contained in subsection (1) of section 345 specifies, "persons by whom offences may be compounded". But, subsection (5) of section 345 stipulates that once an accused has been convicted, "no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard". Undoubtedly, the prescribed offences can be compounded, but the composition of such offences has to be in terms of subsection (6) of section 345 which stipulates that, "the composition shall have the effect of an acquittal".

4. In my opinion "the effect of an acquittal" is different from an acquittal. The guilt of an accused, that is ascertaining whether the accused has committed the offence for which he is charged, is determined by the Trial Court. Once the guilt of the accused has been determined the judgment is delivered by the Court. The judgment has two components, conviction, which means he is guilty, and the sentence, which is the punishment awarded to him. If the legal heirs of the deceased compound the offence it does not mean that the appellant/convict was not guilty of the murder for which he was convicted, which would be the case if, as a consequence of allowing the composition, he is "acquitted". Subsection (6) of section 345 also avoids creating such a fiction as it provides that the "composition of an offence shall have the effect of an acquittal", which means that the punishment (sentence) part of the judgment is brought to an end; neither this subsection states, nor it could, that the convict is "acquitted of the charges". The verdict of guilt (the conviction part of the judgment) that the Trial Court had recorded could only have been undone by the High Court, failing which by this Court; it cannot be undone by the legal heirs of the murdered person.

5. The law permits the legal heirs of a murdered person to compound the offence with the convict, with or without receiving badal-i-sulh/diyat (sections 310 and 323 P.P.C.). When the legal heirs compounded the offence they elected not to seek retribution or the enforcement of the sentence. The very premise of compounding the offence is the acknowledgment of guilt by the accused who is then forgiven by the legal heirs; the affidavits filed by the legal heirs clearly also state this.

6. Section 338-F of the P.P.C. stipulates that in the interpretation and application of Chapter XVI ("Offences Affecting the Human Body") "and in respect of matters ancillary or akin thereto, the Court shall be guided by the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah". The aforesaid interpretation of subsection (6) of section 345 is in conformity with a number of verses of the Holy Qur'an: surah Al-Baqarah (2) verses 178-9, surah Al-Maidah (5) verse 45, surah Al-Isra (17) verse 33 and surah Ash-Shura (42) verse 40. In these verses our Merciful Creator suggests that forgiveness and reconciliation is preferable to revenge or retaliation. A person can only be forgiven if he is guilty. The cited verses neither state nor imply that the finding of guilt is effaced.

7. Therefore, whilst I agree with the conclusion reached by my learned brother that the application for compounding the offences be accepted, I cannot agree that as a consequence the appellant/convict should be "acquitted of the charges" and thus completely exonerated. However, since section 345(6) of the Code has not been examined and interpreted in the aforesaid manner therefore the Hon'ble Chief Justice is requested to take notice of this matter under Article 184(3) of the Constitution as it is a question of public importance involving the enforcement of Fundamental Rights. The office is directed to place the matter before the Hon'ble Chief Justice of Pakistan for appropriate orders."

The matter was thereafter put up before the Hon'ble Chief Justice of Pakistan and his lordship was pleased to pass the following order:

"Let the issue raised in the order by my learned brother Justice Qazi Faez Isa be taken up under Art. 184(3) of the Constitution and the matter be fixed before the bench headed by my brother Justice Asif Saeed Khan Khosa."

It is in the above mentioned background that the matter has been fixed for hearing before the present Bench today.

2. We have heard the learned Assistant Attorney-General for Pakistan, the learned Advocate-General for the Islamabad Capital Territory, the learned Additional Advocate-General, Punjab, the learned Additional Advocate-General, Sindh, the learned Additional Advocate-General, Khyber Pakhtunkhwa and the learned Additional Advocate-General, Balochistan at some length. They have all submitted in complete unison that in Islamic jurisprudence and in the system of administration of criminal justice in vogue in this country a composition of a compoundable offence leads to and results in acquittal of the accused person or convict concerned. They have also submitted that any confusion created by the words "effect of an acquittal" used in section 345(6), Cr.P.C. now stands removed by the word "acquit" used in the subsequently introduced first proviso to section 338-E(1), P.P.C. and its interpretation by this Court in the case of Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695).
3. The issue before us is as to whether a successful and complete compounding of an offence leads to acquittal of the accused person or convict from the allegation or charge or it is only to have an effect of acquittal which may be something short of or other than acquittal. After hearing the learned Law Officers and going through the relevant legal provisions and the precedent cases available on the subject we have explored and attended to the issue at hand from diverse angles and in the following paragraphs we embark upon an effort to find an answer to this question and to resolve the controversy.
4. Section 345, Cr.P.C. deals with compounding of offences and it provides as follows:

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

Offence	Sections of Penal Code applicable	Persons by whom offence may be compounded
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- (2) Subject to subsection (7), the offences punishable under the sections of the Pakistan Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:-

Offence	Sections of Penal Code applicable	Persons by whom offence may be compounded
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- (2-A) Where an offence under Chapter XVI of the Pakistan Penal Code, 1860 (Act XLV of 1860), has been committed in the name or on the pretext of karo kari, siyah kari or similar other customs or practices, such offence may be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties having regard to the facts and circumstances of the case.
- (3) Where any offence is compoundable under this section, the abetment of such offence or any attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.
- (4) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may with the permission of the Court compound such offence.

(5) When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard.

(5-A) A High Court acting in the exercise of its power of revision under section 439 and a Court of Session so acting under section 439-A, may allow any person to compound any offence which he is competent to compound under this section.

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

(7) No offence shall be compounded except as provided by this section and section 311 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

A plain reading of this section shows that compounding of a compoundable offence may be possible before the trial, during the trial or even during the pendency of an appeal or a revision petition and that in some cases compounding of an offence does not require permission of the court whereas in some other cases permission or leave of the relevant court is required for composition. However, the question before us is not as to how a compounding is to take place with or without permission or leave of a court but the controversy before us is about the consequence after a valid compounding has taken place and for resolving the said controversy it is important to appreciate what compounding of an offence actually means.

5. Before we dig deep into the controversy at hand it may be advantageous to mention that there are shorter answers available to the questions involved in this matter and they may be recorded straightaway. Chapter XVI of the Pakistan Penal Code, 1860 deals with offences affecting human body including murder and causing of hurt and all such offences are compoundable by virtue of the provisions of section 309, P.P.C. (Waiver-Afw), section 310, P.P.C. (Compounding-Sulh) and section 345, Cr.P.C. Section 338-E(1), P.P.C. and the first proviso to the same (falling in Chapter XVI of the Pakistan Penal Code, 1860) provide as follows:

338-E. Waiver or compounding of offences. (1) Subject to the provisions of this Chapter and section 345 of the Code of Criminal Procedure, 1898 (V of 1898), all offences under this Chapter may be waived or compounded and the provisions of sections 309 and 310 shall, mutatis mutandis, apply to the waiver or compounding of such offences:

Provided that, where an offence has been waived or compounded, the Court may, in its discretion having regard to the facts and circumstances of the case, acquit or award ta'zir to the offender according to the nature of the offence. -----

(bold letters have been supplied for emphasis)

These provisions show, and show quite clearly, that all the offences affecting human body including murder and causing of hurt falling in Chapter XVI of the Pakistan Penal Code, 1860 are capable of being waived or compounded and that in case of waiver or compounding of such offences the court concerned, after granting the discretionary permission or leave to compound where necessary, is to acquit the person accused or convicted if it is a case of Ta'zir but in a case of Qisas it has a discretion either to acquit or to pass a sentence of Ta'zir against the accused person or convict in view of the peculiar facts and circumstances of the case. It has already been clarified by this Court in the case of *Zahid Rehman v. The State* (PLD 2015 SC 77) that the discretion to punish by way of Ta'zir under section 311, P.P.C. and other similar provisions after waiver or compounding of the right of Qisas is relevant only to cases of Qisas and not to cases of Ta'zir. It is true that section 345(6), Cr.P.C. does not speak of "acquittal" as a consequence of compounding of an offence and it only speaks of the "effect of an acquittal" but it is now clear through the subsequently introduced section 338-E, P.P.C. that a compounding of a compoundable offence in a case of Ta'zir is to

lead to acquittal of the accused person or convict. When the law itself, as it stands today, speaks of acquittal as a consequence of compounding of an offence then any ambiguity in that regard created by the previous state of the law may not confound us anymore.

6. Another short answer to the core question involved in this matter is available in the judgment handed down by this Court in the case of *Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan* (PLD 2010 SC 695) involving the same issue which is under our consideration in the present matter. In that case the respondent was an employee of a Bank and on account of his involvement in and conviction for an offence of murder he was removed from service but later on he was acquitted on the basis of a compromise with the heirs of the deceased and a question arose as to whether a compromise or compounding could validly be treated as acquittal or not for the purposes of his reinstatement in service of the Bank. This Court had categorically held in that case that compounding of an offence through a court in a case of Ta'zir amounted to an acquittal and speaking for the Court on that occasion one of us (Asif Saeed Khan Khosa, J.) had observed as follows:

"7. ----- After introduction of the Islamic provisions in the Pakistan Penal Code, 1860 it has now also become possible for an accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under section 309, P.P.C. or on the basis of compounding/Sulh under section 310, P.P.C. In the case of waiver/Afw an acquittal can be earned without any monetary payment to the heirs of the deceased but in the case of compounding/Sulh an acquittal may be obtained upon acceptance of Badal-i-Sulh by the heirs of the deceased from the accused person. In the present case the respondent had been acquitted of the charge of murder by the learned Sessions Judge, Lakki Marwat as a result of compounding of the offence and such compounding had come about on the basis of acceptance of Badal-i-Sulh by the heirs of the deceased from the respondent.

8. The provisions of the first proviso to subsection (1) of section 338-E, P.P.C. clearly contemplate acquittal of an accused person on the basis of compounding of an offence by invoking the provisions of section 310, P.P.C. and the effect of such compounding has also been clarified in most explicit terms by the provisions of subsection (6) of Section 345, Cr.P.C. in the following words:

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

9. The legal provisions mentioned above leave no ambiguity or room for doubt that compounding of an offence of murder upon payment of Badal-i-Sulh -----and that such compounding of the offence leads to nothing but an acquittal of the accused person. It has already been clarified by this Court in the case of *Dr. Muhammad Islam v. Government of N-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar* (1998 SCMR 1993) as follows:

"We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals."

The said precedent case also involved a question of reinstatement in service of an accused person implicated in a criminal case who had been acquitted by the criminal court and this Court had

declared that an acquittal had no shades and there was no concept of honourable or dishonourable acquittals. It had specifically been noted by this Court in that case that there could also be cases involving acquittals on the basis of compromise between the parties and after raising a query regarding the status of such acquittals this Court had hastened to add that "All acquittals are certainly honourable". -----

10. ----- Be that as it may, an ultimate acquittal in a criminal case exonerates the accused person completely for all future purposes vis- -vis the criminal charge against him as is evident from the concept of autrefois acquit embodied in section 403, Cr.P.C. and the protection guaranteed by Article 13(a) of the Constitution of the Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic jurisprudence, Afw (waiver) or Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime. In this backdrop we have found it difficult as well as imprudent to lay it down as a general rule that compounding of an offence invariably amounts to admission of guilt on the part of the accused person -----."

(underlining has been supplied for emphasis)

7. Delving deeper into the issue we note that the concept of compounding of an offence, also termed as composition of an offence, is an old concept recognized not only in the Islamic law and the Pakistan Penal Code, 1860 but also in the Anglo-Saxon jurisprudence. In his book *An Introduction to the Philosophy of Law* (revised edition 1954) Roscoe Pound had observed about the concept of composition of an offence as follows:

"The first theory of liability was in terms of a duty to buy off the vengeance of him to whom an injury had been done whether by oneself or by something in one's power. The idea is put strikingly in the Anglo-Saxon proverb, 'Buy spear from side or bear it', that is, buy off the feud or fight it out. --- As the social interest in peace and order - the general security in its lowest terms - comes to be secured more effectively by regulation and ultimate putting down of feud as a remedy, payment of composition becomes a duty rather than a privilege --- The next step is to measure the composition not in terms of the vengeance to be bought off in terms of the injury. A final step is to put it in terms of reparation."

In Black's Law Dictionary (Ninth Edition) the definition of 'composition' includes "A payment of money or chattels as satisfaction for an injury. In Anglo-Saxon and other early societies, a composition with the injured party was recognized as a way to deter acts of revenge by the injured party." In the same dictionary the definition of 'Compound' includes "To agree for consideration not to prosecute (a crime)". The meaning of the word 'Compound' in The Concise Oxford Dictionary of Current English (Ninth Edition) includes "settle (a debt, dispute, etc.) by concession or special agreement", "condone (a liability or offence) in exchange for money etc.", "forbear from prosecuting (a felony) from private motives" and "come to terms with a person, for forgoing a claim etc. for an offence". In Pakistan the Islamic concepts of Afw and Sulh (two different ways of compounding an offence which is made compoundable by the legislature) are an important part of our criminal law and in cases of murder and causing of hurt sections 309, 310 and 338-E, P.P.C. provide for Waiver-Afw (forgiveness without accepting any compensation) and Compounding-Sulh (compounding on accepting badal-i-sulh/compensation) and section 345, Cr.P.C. provides the mechanism for such compounding. According to Islamic jurisprudence Afw and Sulh are based upon forgiveness and reconciliation and in his lordship's separate note dated 21.03.2017 passed in this very matter our learned brother Qazi Faez Isa, J. had referred to the Verses of the Holy Qur'an [Surah Al-Baqarah (2) Verses 178-9, Surah Al-Maidah (5) Verse 45, Surah Al-Isra (17) Verse 33 and Surah Ash-Shura (42) Verse 40] wherein

our Merciful Creator has suggested that forgiveness and reconciliation is preferable to revenge or retaliation. Without burdening this judgment with copious references in that regard it may suffice to state for the present purposes that the Islamic scholars around the globe agree that Afw (forgiveness) means to hide an act, to obliterate, remove and pardon it and to erase and efface it from the record as if it had never been committed and, likewise, Sulh (reconciliation) means that the act or offence is forgiven and forgotten as if it had never happened. In his *A Dictionary of Islam* (The Unit Printing Press, Lahore, 1964) Thomas Patrick Hughes had recorded as follows:

"AFU. Lit. "erasing, cancelling." The word is generally used in Muhammadan books for pardon and forgiveness. It occurs eight times in the Qur'an, e.g. Surah ii. 286, "Lord, make us not to carry what we have not strength for, but forgive us and pardon us and have mercy on us." Surah iv. 46, "Verily God pardons and forgives."

'Al-'Afu is one of the ninety-nine special names of God. It means "one who erases or cancels;" "The Eraser (of sins)." See Qur'an, Surah iv. 51."

8. According to various dictionaries of English language, reference to which may not be necessary here, setting free from guilt, sin or penalty and forgiveness of an offence is also termed as absolution or absolving of the person concerned. As a consequence of Afw or Sulh resulting in obliteration and removal of the offence and its erasing and effacing from the record the accused person or convict stands absolved of what had been done by him or of what was attributed to him and such absolving effect of the act of compounding is recognized in the following treatises:

English Synonymes Explained In Alphabetical Order; with Copious Illustrations and Examples by George Crabb, A. M. (published by William Clowes and Sons, London, 6th Edition, 1837):

"To ABSOLVE, ACQUIT.

ABSOLVE, in Latin absolvo, is compounded of ab from and solvo to loose, signifying to loose from that with which one is bound. ACQUIT, in French acquitter, is compounded of the intensive syllable ac or ad, and quit, quitter, in Latin quietus quite, signifying to make easy by the removal of a charge.

These terms imply the setting free from guilt or its consequences. Absolving may sometimes be applied to offences against the laws of man, but more frequently to offences against God; acquitting applies solely to offences against man. The conscience is released by absolution; the body, goods, or reputation, are set free by an acquittal.

Yet to be secret, makes not sin the less;

'Tis only hidden from the vulgar view,

Maintains indeed the reverence due to princes,

But not absolves the conscience from the crime. DRYDEN.

The fault of Mr. Savage was rather negligence than ingratitude; but Sir Richard Steele must likewise be acquitted of severity; for who is there that can patiently bear contempt from one whom he has relieved and supported? JOHNSON.

To ABSOLVE, ACQUIT, CLEAR.

ABSOLVE in this case, as distinguished from the former article, (v. To absolve,) is extended to all matters affecting the conscience generally. ACQUIT (v. To absolve, acquit) and CLEAR in the sense of making clear or free from, are applied to everything which may call for blame, or the imputation of what is not right. A person may be absolved from his oath, acquitted or pronounced quit of every charge, and cleared from every imputation.

Compell'd by threats to take that bloody oath

And the act ill, I am absolv'd by both. WALKER.

Those who are truly learned will acquit me in this point, in which I have been so far from offending, that I have been scrupulous perhaps to a fault in quoting the authors of several passages which I might have made my own. ADDISON.

He set himself with very great zeal to clear the Romish church of idolatry. BURNET."

English Synonymes Explained In Alphabetical Order; with Copious Illustrations by George Crabb, A. M. (published by LEIPSIC, a New Edition, 1839):

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ABSOLVE, in Latin absolvo, is compounded of ab from and solvo to loose, signifying to loose from that with which one is bound.

ACQUIT, in French acquitter, is compounded of the intensive syllable ac or ad, and quit, quitter, in Latin quietus quite, signifying to make easy by the removal of a charge.

These 2 words convey an important distinction between the act of the Creator and the creature.

To absolve is the free act of an omnipotent and merciful being towards sinners; to acquit is the act of an earthly tribunal towards supposed offenders.

By absolution, we are released from the bondage of sin and placed in a state of favour with God; by an acquittal we are released from the charge of guilt, and reinstated in the good estimation of our fellow creatures.

One is absolved from an oath, acquitted of a charge, and cleared from actual guilt.

Absolve is also sometimes used in the sense of setting free from a charge, as from an obligation in which sense it comes still nearer to the words acquit and clear; but it is thus used mostly in the grave style, and carries with it the idea of setting one altogether free from the consequences of a charge."

Crabb's English Synonymes by George Crabb, A. M. (published by Grosset & Dunlap Publishers, New York, 1917):

"ABSOLUTION. See FORGIVE.

ABSOLVE, ACQUIT. Absolve, in Latin absolvo, is compounded of ab, from, and solvere, to loose, signifying to loose from that with which one is bound. Acquit, in French acquitter, is compounded of the intensive syllable ac or ad, and quit, quitter, from Latin quietus, quite, signifying to make easy by the removal of a charge.

These terms imply the setting free from guilt or its consequences. Absolving may sometimes be applied to offences against the laws of man, but more frequently to offences against God; acquitting applies solely to offences against man. The conscience is released by absolution; the body, goods, or reputation are set free by an acquittal.

See also FORGIVE.

Absolve, Acquit, Clear. - Absolve in this case, as distinguished from the former article, is extended to all matters affecting the conscience generally. Acquit and clear, in the sense of making clear or free from, are applied to everything which may call for blame, or the imputation of what is not right. A person may be absolved from his oath, acquitted or pronounced quit of every charge, and cleared from every imputation."

Webster's New International Dictionary of the English Language by William Allan Neilson, Thomas A. Knott, Paul W. Carhart (published by G. & C. Merriam Company Publishers, 2nd Edition, 1957):

"Ab-solve'

1. To set free, or release, as from some obligation, debt, or responsibility, or from the consequences of guilt or from such ties as it would be guilt to violate; to pronounce free; as, to absolve a subject from his allegiance.

2. To acquit; to adjudge or pronounce not guilty.

Halifax was absolved by a majority of fourteen. Macaulay.

3. To free from a penalty; to pardon; remit (a sin); - said of the sin or guilt.

In his name I absolve your perjury. Gibbon.

4. To finish; accomplish.

The work begun, how soon absolved. Milton.

5. To resolve or explain, as a difficulty. Obs.

Syn. - Exonerate, discharge, forgive.

See EXCULPATE."

The material mentioned above shows that obliteration and removal of the offence and its erasing and effacing from the record as a result of compounding has the effect of absolving the accused person or convict of the act, acquittal from the charge and clearance from the actual guilt and the legislature in 1898, when section 345, Cr.P.C. was introduced, was aware of the fact that in English language as well as in legal literature the word 'absolve' was synonymous with the words 'acquit' and 'clear'. The legislature was cognizant of the legal position at that time that compounding of an offence ipso facto amounted to absolution which automatically had the effect of acquittal from the charge and clearance from guilt and, therefore, there was hardly any occasion for the legislature to provide in section 345, Cr.P.C. that upon a successful composition of an offence the accused person or convict would be acquitted by the court concerned. It was already understood quite well that compounding of an offence would have an automatic "effect of an acquittal" and that was exactly what was legislated through section 345(6), Cr.P.C. and no need was felt to expressly provide for an order of acquittal to be passed by a court on the basis of compounding.

9. A successful and complete composition of a compoundable offence having the "effect of an acquittal" in terms of section 345(6), Cr.P.C. came under discussion in the cases of *Kumarasami Chetty v. Kuppusami Chetty and others* (AIR 1919 Madras 879(2)), *Ram Richpal v. Mata Din and another* (AIR 1925 Lahore 159), *Jhangtoo Barai and another v. Emperor* (AIR 1930 Allahabad 409), *Dharichhan Singh and others v. Emperor* (AIR 1939 Patna 141), *Mt. Rambai wife of Bahadursingh v. Mt. Chandra Kumari Devi* (AIR 1940 Nagpur 181), *Godfrey Meeus v. Simon Dular* (AIR (37) 1950 Nagpur 91) and *Prithvi Bhagat and another v. Birju Sada* (AIR 1962 Patna 316) and the ratio decidendi of the said cases is summed up as follows:

(i) A compounding can take place during the trial or during the pendency of an appeal or a revision petition and it can take place even before the case has reached the trial court for trial.

(ii) A complete compounding fulfilling the requirements of sub-section (1) or (2) of section 345, Cr.P.C., as the case may be, cannot be withdrawn or resiled from by any party at any later stage because it has already created the effect of an acquittal of the accused person.

- (iii) Composition of a compoundable offence not requiring permission of the court deprives the court of its jurisdiction to try the case or ousts the jurisdiction of the court to try the offence and the court has no other option but to acquit the accused person.
- (iv) Composition of a compoundable offence not requiring permission of the court and grant of permission or leave to compound by the relevant court in cases where such permission or leave is required result in immediate acquittal of the accused person.
- (v) In some of the above mentioned cases acquittal of the accused person was ordered on the basis of successful and complete composition rather than observing that the composition would only have the effect of an acquittal.

All the above mentioned precedent cases had been taken notice of by this Court in the case of Tariq Mehmood v. Naseer Ahmed and others (PLD 2016 SC 347) but the issue relating to compounding of an offence involved in that case was different from the one under discussion here.

10. In the context of the issue at hand it is of critical importance to notice that the heading of section 345, Cr.P.C. is 'Compounding of offences' and the said heading itself says it all that we are trying to find out. A compounding is in respect of the offence regarding which a person has been accused or convicted and it has no direct relevance to his guilt or punishment or even to his conviction or sentence and this is more so because a compounding can take place even before any finding of guilt or conviction is recorded. Through compounding the offence itself is compounded and resultantly the accused person or convict ipso facto stands absolved of the allegation levelled or the charge framed against him regarding commission of that offence and that is why there is no need for recording his acquittal in that connection because through the act of compounding the offence itself has disappeared or vanished. As already mentioned above, in English language the words "absolve", "acquit" and "clear" are synonymous words and can be used interchangeably in the context of criminal law and this was so acknowledged in the treatises referred to hereinbefore.

11. We find that the controversy over "acquittal" and "effect of an acquittal" in the context of section 345(6), Cr.P.C. and drawing a distinction in this regard between guilt and punishment may be quite unnecessary because for all practical purposes an acquittal or any other dispensation having the effect of an acquittal may not make any difference to the parties to the case or the system of administration of justice in the larger context. An acquittal of an accused person or convict from an allegation or charge of committing an offence entails that he cannot again be subjected to investigation in connection with the same allegation, he cannot be arrested, prosecuted or punished again for committing the same offence and the principle of *autrefois acquit* enshrined in Article 13(a) of the Constitution of Pakistan and also in section 403, Cr.P.C. becomes applicable to him. The acquittal of an accused person or convict also leads to his release from custody if he is in confinement and discharge of his bail bonds and sureties if he is on bail. Such consequences of an acquittal of an accused person or convict can also quite conveniently be called or termed as effects of his acquittal. In this backdrop the only rationale we can decipher as to why the legislature spoke of "effect of an acquittal" in the context of compounding of an offence and did not use the word "acquittal" in section 345(6), Cr.P.C. is that it could not employ or utilize the word acquittal in that context because an acquittal can be ordered in connection with an existing allegation or charge but where the allegation or the charge itself has disappeared, evaporated or vanished or it stands erased or effaced on account of composition of the offence itself there is hardly any occasion for recording an acquittal. In case of such a metamorphosis brought about by a composition of the offence the best that the legislature could do was to extend all the benefits and effects of an acquittal to the concerned person and this is exactly what had been done by it through the provisions of section 345(6), Cr.P.C.

12. The issue regarding compounding being relevant only to punishment and not to guilt of the accused person or convict may also be viewed from the angle of conviction and sentence and we note in that context that in the Code of Criminal Procedure, 1898 the legislature was quite conscious of the distinction between a conviction and a sentence or, in other words, between guilt and punishment. Section 412, Cr.P.C. speaks of conviction and sentence separately and provides for a situation where relief may be extended only in the matter of sentence and not in the matter of conviction. Sections 169 and 249, Cr.P.C. speak only of an accused person's release pending an investigation or trial when he is in custody without making any mention of his guilt. In the same statute the legislature, if it was so minded, could have provided in section 345, Cr.P.C. that as a result of compounding of an offence the person concerned would be released from custody or that he would not be liable to any punishment but his guilt in the matter would stand undisturbed but the legislature did not say that. In that section the legislature did not even provide for release of the accused person or convict from custody or his acquittal as a consequence of compounding and such silence of the legislature in those regards was a silence which said it all when it mentioned that all the effects of acquittal would automatically flow from the compounding. Such effects of acquittal could not be ordered to flow from the compounding unless the compounding itself amounted to, without saying so, nothing but acquittal by operation of the law. It may be appreciated in this context that an acquittal or the effects of it in criminal law are necessarily relevant to guilt of a person and criminal jurisprudence and law do not envisage or contemplate removal of punishment while impliedly maintaining a person's guilt. Such an approach may be debated in theological or sociological contexts and that too only in an academic sense but for importing the same into criminal jurisprudence and law one would have to rewrite the same which exercise we are neither ready nor equipped or qualified to undertake.

13. The stance sometimes taken in favour of keeping the relevant person's guilt intact while doing away with his punishment on the basis of compounding of an offence is premised upon considerations other than legal. According to this stance such a person should be kept away from public offices and civil services, etc. because he is an adjudged criminal who was once found guilty of an offence but he got away with his punishment because of compounding of the relevant offence. In his separate note recorded in the case of *Mureed Sultan and others v. The State through P. G. Punjab and another* (2018 SCMR 756) our learned brother Qazi Faez Isa, J. had raised similar concerns in this regard as had been voiced by his lordship in his lordship's separate note dated 21.03.2017 recorded in the present matter. In the said case of *Mureed Sultan and others* our learned brother had observed as under:

"7. Some may question the significance of the entire discussion, and enquire, if a court has accepted the application under section 345 of the Code and the convict has been released from jail what difference would his acquittal make. There are grave consequences. A man who has committed murder but is "acquitted" merely because the legal heirs of the murdered person compound the offence, would enable the murderer, for instance, to honestly declare on a job application that he is not and has never been a convict; he could thus be eligible to apply for government employment, be employed as a teacher, be inducted into the Armed Forces, enter the judicial service or even be appointed as a judge of the superior courts. There is then the religious aspect to the discussion. The person who has committed the sin of murder if he professes his guilt or is convicted in this world, and serves out his sentence or is released as a consequence of the legal heirs forgiving him, may be spared the agony of punishment in the Hereafter."

While appreciating the intensity and sincerity of the sentiment expressed and also the gravity of the concerns voiced by our learned brother in respect of different ramifications of the issue not only in the context of

public life in this world but also regarding the Hereafter we have, with utmost respect, not been able to bring ourselves to agree with his lordship so as to interpret the existing law in the light of some hypothetical possibilities in this world and retribution or redemption in the Hereafter. It is not for us to consider as to how such a person would be dealt with by Almighty Allah in the next world or on the Day of Judgment as our job is only to interpret and apply the law of the land as it exists. Our short response to such stance is that it is based upon nothing but good intentions and pious wishes, it stems from mere possibilities conjured up by a noble and public-spirited mind, it involves public policy and it is for the legislature to amend the relevant laws, etc. to keep such a person out of the public life, if it so desires and decides. Without introducing appropriate amendments in the criminal law in vogue in the country there is little scope for canvassing such collateral or incidental punishments for a person and as long as the law of the land stands as it is all the fruits and effects of acquittal have to be extended to such person on the basis of a complete and lawful compounding of the offence with him. Be that as it may, this Court has already rejected a similar argument based upon this very stance in the above mentioned case of Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695) with the following observations:

"9. ----- It has already been clarified by this Court in the case of Dr. Muhammad Islam v. Government of N-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar (1998 SCMR 1993) as follows:

"We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals."

The said precedent case also involved a question of reinstatement in service of an accused person implicated in a criminal case who had been acquitted by the criminal court and this Court had declared that an acquittal had no shades and there was no concept of honourable or dishonourable acquittals. It had specifically been noted by this Court in that case that there could also be cases involving acquittals on the basis of compromise between the parties and after raising a query regarding the status of such acquittals this Court had hastened to add that "All acquittals are certainly honourable". If that be the case then the respondent in the present case could not be stigmatized or penalized on account of his acquittal on the basis of a compromise. -----.

10. As regards the submission made by the learned counsel for the appellants based upon the issue of propriety of reinstating in service a person who, by virtue of compounding of an offence of murder, is a self-condemned murderer we may observe that we have pondered over the said issue from diverse angles and have not felt persuaded to agree with the learned counsel for the appellants. Experience shows that it is not always that a compromise is entered into by an accused person on the basis of admission of guilt by him and in many cases of false implication or spreading the net wide by the complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from courts of law after arduous, expensive and long legal battles. Even in the present case the respondent and his brother were accused of launching a joint assault upon the deceased upon the bidding and command of their father and before the learned trial court the respondent's brother had maintained in

unequivocal terms that he alone had murdered the deceased and the respondent and their father had falsely been implicated in this case. Be that as it may, an ultimate acquittal in a criminal case exonerates the accused person completely for all future purposes vis- -vis the criminal charge against him as is evident from the concept of *autrefois acquit* embodied in section 403, Cr.P.C. and the protection guaranteed by Article 13(a) of the Constitution of the Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic jurisprudence, *Afw* (waiver) or *Sulh* (compounding) in respect of an offence has the effect of purging the offender of the crime. In this backdrop we have found it difficult as well as imprudent to lay it down as a general rule that compounding of an offence invariably amounts to admission of guilt on the part of the accused person or that an acquittal earned through such compounding may have ramifications qua all spheres of activity of the acquitted person's life, including his service or employment, beyond the criminal case against him. We may reiterate that in the case of Dr. Muhammad Islam (*supra*) this Court had categorically observed that "All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals". The sway of those observations made by this Court would surely also encompass an acquittal obtained on the basis of compounding of the offence. It is admitted at all hands that no allegation had been levelled against the respondent in the present case regarding any illegality, irregularity or impropriety committed by him in relation to his service and his acquittal in the case of murder had removed the only blemish cast upon him. His conviction in the case of murder was the only ground on which he had been removed from service and the said ground had subsequently disappeared through his acquittal, making him reemerge as a fit and proper person entitled to continue with his service."

(underlining has been supplied for emphasis)

14. Ordinarily an acquittal recorded by a trial court in a criminal case means that the charge framed against an accused person in respect of committing an offence has not been proved and he is, thus, judicially exonerated from the allegation. In our country in some special circumstances provided for in sections 249-A and 265-K, Cr.P.C. an acquittal can also be recorded by a trial court even before framing of a formal charge where the allegation levelled is found to be groundless or there is no probability of the accused person's conviction even if a trial is conducted. After an accused person is convicted and sentenced by a trial court he can be acquitted by a higher Court through an appeal or a revision petition and upon such acquittal his conviction and sentence are set aside. Compounding or composition of an offence is, however, a distinct dispensation of its own kind and it has to be understood in its own context without mixing or confusing it with concepts of conviction, sentence and acquittal. The references made above to Roscoe Pound's book, Black's Law Dictionary and Concise Oxford Dictionary show that composition of an offence serves a purpose different from that ordinarily served by the judicial process, i.e. retribution through law. Instead of retribution a composition brings about reconciliation between the parties, it buys off the vengeance of him to whom an injury had been done by buying spear from side rather than bearing it, through it vengeance of the victim is bought off through reparation, it achieves satisfaction for an injury rather than punishment for the injury and it deters acts of revenge by the injured party. Likewise, to compound means to agree not to prosecute a crime, to settle a dispute by concession or special agreement, to condone an offence in exchange for money or any other consideration, to forbear from prosecuting a crime and to come to terms with a person for forgoing a claim, etc. for an offence. We understand that the true meanings and objects of the special dispensation of compounding or composition of offences are to be appreciated and

recognized in this context rather than in the narrow context of conviction, sentence and acquittal and this is probably why section 345(6), Cr.P.C. speaks of a composition to have the effect of an acquittal and does not speak of setting aside of conviction and sentence and the resultant acquittal from the charge.

15. Any controversy over the issue that a person's guilt already determined judicially cannot be undone by the victim or his heirs on their own has appeared to us to be misconceived as the same overlooks the provisions of subsections (5) and (5-A) of section 345, Cr.P.C. according to which

(5) When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard.

(5-A) A High Court acting in the exercise of its power of revision under section 439 and a Court of Session so acting under section 439-A, may allow any person to compound any offence which he is competent to compound under this section.

(bold letters have been supplied for emphasis)

It is, thus, obvious that in a case where a court has already convicted a person of a compoundable offence and has held him guilty there no compounding of the offence by the victim or his heirs with the convict can take effect or can be said to be successful or complete unless the relevant appellate or revisional court grants leave to compound or allows the proposed composition. The law, therefore, clearly envisages not only involvement but also decision of the relevant court in finalization of the proposed composition of offence in such a case and it cannot be said that guilt of the convicted person is undone by the victim or his heirs on their own. It goes without saying that the matter of granting or refusing leave to compound and allowing or disallowing the same lies in the discretion of the relevant court and before taking a decision in that regard the court concerned has to apply its judicial mind to the facts and circumstances of the case in their totality and also to consider desirability or otherwise of granting permission in that respect. This aspect of the matter had been considered by this Court in the case of *Naseem Akhtar and another v. The State* (PLD 2010 SC 938) and it was observed as under:

"5. In the above context, the relevant parts of the section 345(5) and (7), Cr.P.C. are reproduced as below.

S.345(5)

"When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard."

S.345(7)

"No offence shall be compounded except as provided by this section".

Before proceeding to analyze the noted provision, it may be pertinent to mention here that the expressions "an appeal is pending" and "the Court" appearing *ibid* (section 345(5) for all intents and purposes of the law shall also mean the leave petition pending before this Court. Be that as it may, because of the use of word 'No', in both the subsections the command of law is in the negative form, thus, the composition of an offence is prohibited lacking (without) the leave of the Court. As per the *Black's Law Dictionary* (Fifth Edition 801), the noted expression is defined to mean "Permission obtained from a Court to take some action which, without such permission, would not be allowable." Thus, the object requiring leave from the Court as per the clear intention of the legislature is neither meaningless nor purposeless and it cannot be construed that while considering the compromise plea, even of a compromise which is lawfully entered, by free consent of the legal heirs, the Court, should act in a mechanical manner and allow the same as a matter of course or routine; should sit as a silent spectator or to conduct as a post office *simpliciter* and affix a judicial

stamp upon it. Rather it is the duty and the prerogative of the Court to determine the fitness of the case for the endorsement and sanction of the compromise and in appropriate cases, where the compromiser and offender is directly or indirectly beneficiary of the crime; the offence is committed or is caused thereof, for an obvious object of grabbing the property of the deceased by the compromiser, through his off spring, who may ultimately benefits himself (the offender) as well, the Court may refuse to give an effect to such a deal, especially coupled with the scenario when the offence is gruesome, brutal, cruel, appalling, odious, gross and repulsive which causes terror and sensation in the society."

(underlining has been supplied for emphasis)

There is no dearth of authority in our country where compounding of offences had been refused by the courts in view of some peculiar features of those cases which fact clearly demonstrates that the ultimate decision whether a compounding of an offence (in serious cases requiring permission or leave of the court as opposed to less serious cases involving petty offences not requiring permission of the court for the purpose) is allowed or not lies with the courts and not with the victims or their heirs. The issues highlighted by our learned brother Qazi Faez Isa, J. and mentioned above may be relevant to the concerned court at the time of granting or refusing permission or leave in respect of the proposed composition but after such permission or leave has been granted by the court and the proposed composition is successfully completed the accused person or convict is to be acquitted and such acquittal is to entail all the fruits and effects of a lawful acquittal. This Court has already declared, as referred to above, that an acquittal has no shades and there are no honourable or dishonourable acquittals.

16. It may be appreciated in this context that the law of the land permits compounding of some offences and through the act of compounding the victim or his heirs absolve the accused person or convict of the guilt and if such composition is allowed or permitted by the relevant court, where required, then because of a successful and complete composition the offence itself vanishes leaving no issue about guilt or otherwise alive. An offence is generally against the State and the society at large but the legislature has made some of the offences compoundable which is a recognition that wishes of the victims or their heirs have an important role in prosecution of such offences and adjudication regarding guilt and punishment therein, subject of course to permission or leave of the court for composition where required. In some of the precedent cases referred to above it had categorically been held that once a composition is complete in respect of a compoundable offence not requiring permission of the court the concerned court is divested of its jurisdiction to try the case or the offence. The references made to Black's Law Dictionary and Concise Oxford Dictionary also amply demonstrate that to compound means to agree not to prosecute a crime, to settle a dispute by concession or special agreement, to condone an offence in exchange for money or any other consideration, to forbear from prosecuting a crime and to come to terms with a person for forgoing a claim, etc. for an offence. The decision not to prosecute a person for a compoundable offence allegedly committed by him or the decision to absolve him of his guilt even where it has been judicially determined are decisions which have been given by the legislature in the hands of the victims or their heirs by making the offence compoundable and in cases where permission or leave of a court is required for composition of such offence this spirit of the law is to be kept in view and the requisite permission or leave may ordinarily not be withheld or refused unless the facts and circumstances of the case persuade the relevant court otherwise. Carrying the spirit of composition (forgiveness and reconciliation) forward we may add that grant of the requisite permission or leave by the court in such cases should be a rule and its withholding or refusal an exception. Composition of a compoundable offence is a concession extended by the legislature

and also by the religion of Islam to the victims and their heirs and the same may not lightly be taken away or whittled down by the courts.

17. As a result of the discussion made above we declare the legal position as follows:

(i) As provided by the provisions of section 338-E(1), P.P.C. and the first proviso to the same and as already declared by this Court in the case of Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695) as a result of a successful and complete compounding of a compoundable offence in a case of Ta'zir under section 345, Cr.P.C., with permission or leave of the relevant court where required, an accused person or convict is to be acquitted by the relevant court which acquittal shall erase, efface, obliterate and wash away his alleged or already adjudged guilt in the matter apart from leading to setting aside of his sentence or punishment, if any.

(ii) In the context of the provisions of section 345(6), Cr.P.C. the effect of an acquittal recorded by a court on the basis of a successful and complete compounding of a compoundable offence shall include all the benefits and fruits of a lawful acquittal.

MWA/S-27/S Order accordingly.