

S.No.120

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

CRM-M-40199 of 2018 (O&M)
Date of Decision:14.09.2018

Sanjay Kalra **.....Petitioner**

Vs.

State of Haryana and anotherRespondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Kunal Muthreja, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

Rajbir Sehrawat, J.(Oral)

This is a petition seeking quashing of FIR No.430 dated 03.12.2017 registered under Section 174-A IPC at Police Station Bhupani, District Faridabad.

Counsel for the petitioner contends that in fact, the petitioner was never served in the main complaint itself. Therefore, he could not appear before the trial Court. Even the service of summons before proclamation and the proclamation itself has not been carried out in accordance with the provisions of Section 82 Cr.P.C. It is contended by the counsel that had the petitioner been served in any manner, he would have definitely appeared before the trial Court. The petitioner had no intention to flee from course of justice.

It is further contended that even the main complaint filed under Section 138 of NI Act, from which the present FIR has emerged, stands withdrawn by the complainant vide order dated 17.05.2018 at Annexure P.8

with the present petition. It is contended that the matter has finally been settled between the parties. There is no scope for the parties again approaching the Court for the same dispute. Therefore, it would be totally futile exercise if the petitioner is made to appear before the trial Court at this stage only to face the proceedings for offence under Section 174-A IPC.

Notice of motion.

Mr. Pulkit Dagar, Advocate appears for the complainant and accepts notice. Mr. Surender Singh, AAG, Haryana, accepts notice on behalf of the State.

Although all the above factual contentions of the petitioner may not be, strictly speaking, substantiated and legally sustainable, however, the fact remains that the main complaint, from the proceedings of which the present proceedings have emerged, itself stands disposed of by the trial Court, as having been withdrawn by the complainant. Therefore, the petitioner would not be required to appear before the Court in any dispute between the parties.

This Court has already held in **CRM-M-19636 of 2018 – Vikas Gupta Vs. State of Haryana and others** that if the main petition itself is quashed on the basis of compromise then even the FIR under Section 174-A IPC can be quashed, lest the accused should be made to suffer without there being any substantive proceedings against him. The relevant observations in the above-said case are as under:-

“Having heard the counsel for the parties on this point and perusing the records, this Court is of the considered view that the objective of the coercive mechanism prescribed the

provisions of the Code of Criminal Procedure for declaring an accused as proclaimed person is mainly to ensure that the person remains present before the Court to face the trial and to receive the punishment for his alleged conduct, which has constituted the offence. If the person has appeared before the Court, even after he was declared as proclaimed person or is granted bail by the Court after such declaration then the object of the procedure prescribed under the Code of Criminal Procedure stands achieved. Therefore, if after declaring an accused a proclaimed person, he has started facing trial and has not defaulted against thereafter, and further the offences under the main FIR are compromised, then, the Court can take lenient view to quash the FIR under Section 174-A of the IPC as well. However, this would be required to be considered with reference to the facts and circumstances of each case, depending upon nature and duration of the default and also the subsequent conduct of such accused.”

As observed above, the main objective of the coercive proceedings, contained in Section 82 of Cr.P.C is to ensure that the accused remains present before the trial Court to receive the orders and the punishments which may be passed against him in a case in which he is accused. However, the case in which the petitioner was accused has been amicably settled between the parties and accordingly, the main complaint case stands withdrawn by the complainant. If the main case itself is no more surviving and the petitioner is no more accused in that case, then it

would not be justified to force such person to keep on appearing before the trial Court, just to face the proceedings under Section 174-A of IPC, which has emerged only from the procedure which was required to be followed in the main case. After all the Court of law does not have any separate and independent interest to punish an accused than his liability for the offence alleged in the main case.

In view of the above, the present petition is allowed. Accordingly, FIR No.430 dated 03.12.2017 registered under Section 174-A IPC at Police Station Bhupani, District Faridabad and all consequential proceedings arising therefrom are quashed.

September 14, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No