

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

CRM-M-11269-2019
Reserved on : 03.05.2019
Date of decision: 07.05.2019

Aditya Goyal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Namit Khurana, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of order dated 03.12.2018 (Annexure P-1), passed by the trial Court in Criminal Complaint No. 1624/2017 dated 12.09.2017, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), vide which, the petitioner has been declared a proclaimed person as well as other consequential proceedings arising therefrom including FIR No. 66 dated 01.02.2019, registered under Section 174-A IPC at Police Station Jagadhri City, District Yamuna Nagar (Annexure P-2).

Brief facts of the case are that M/s HDB Finacial Services Ltd. filed a complaint under Section 138 of the N.I. against the petitioner on account of dishonouring of a cheque dated 26.07.2017.

During the pendency of the said complaint, the petitioner was under the process of settling the dispute with the complainant amicably and on 18.05.2018, on the bailable warrants, a report was received that the

petitioner has been served through his mother-in-law, whereas, petitioner is an unmarried person, therefore, there was in fact no service upon petitioner.

The trial Court, vide order dated 20.08.2018, issued a proclamation under Section 82 Cr.P.C. for summoning the petitioner for 17.11.2018 and the said proclamation was made by way of publication, however, affixation of the publication was done at a place which was not the ordinary place of residence of the petitioner. Thereafter, vide impugned order dated 03.12.2018, the trial Court declared the petitioner a proclaimed person and further directed that an FIR under Section 174-A IPC be registered against him.

In compliance thereof, impugned FIR No. 66 dated 01.02.2019, was registered under Section 174-A IPC at Police Station Jagadhri City, District Yamuna Nagar (Annexure P-2) against the petitioner.

However, the petitioner, during the pendency of the said complaint, settled the dispute with the complainant and appeared before the trial Court and was granted bail in the proceedings under Section 138 of the N.I. Act and on 13.02.2019, the trial Court, in view of the statement made by learned counsel for the complainant that the petitioner has cleared the entire dues towards complainant and wants to withdraw the complaint, the same was dismissed as withdrawn.

This Court, on 12.03.2019, noticing the aforesaid facts, while issuing notice of motion, had directed the petitioner to appear before the Investigating Officer with a further direction to deposit the cost of ₹10,000/- with the Illaqua Magistrate.

Learned counsel for the petitioner has submitted that non-appearance of the petitioner in the proceedings under Section 138 of

the N.I. Act was on account of non-service of summons upon him as it has wrongly been reported on the bailable warrants that the service was effected through his mother-in-law, whereas he is not a married person.

Learned counsel for the petitioner has further submitted that even affixation of the publication was done at a wrong address where the petitioner was not residing and the petitioner, on coming to know about the same, has already put in appearance before the trial Court in the proceedings under Section 138 of the N.I. Act, which was later on dismissed as withdrawn having been compromised between the parties.

Learned counsel for the petitioner has relied upon the decisions rendered by this Court in ***Vikas Sharma vs. Gurpreet Singh Kohli and another (supra), 2017, (3) L.A.R. 584, Microqual Techno Limited and others Vs. State of Haryana and another, 2015 (32) RCR (Crl.) 790 and Rajneesh Khanna Vs. State of Haryana and another” 2017(3) L.A.R. 555,*** wherein, in an identical circumstance, this Court has held that since the main petition filed under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, therefore, continuation of proceedings under Section 174-A of IPC shall be nothing but an abuse of the process of law.

Learned State counsel, on instructions from the Investigating Officer, has not disputed the factual position.

After hearing learned counsel for the parties, I find merit in the present petition.

Since the main complaint filed by the complainant under Section 138 of the N.I. Act itself stands dismissed as withdrawn by the trial Court keeping in view the fact that petitioner has cleared the entire dues and

on the direction of this Court, the petitioner has already appeared before the Investigating Officer and has also deposited the cost of ₹10,000/- with the Illaqua Magistrate, this Court is of the opinion that continuation of proceedings under Section 174-A IPC shall be an abuse of process of law.

Accordingly, in view of the facts and circumstance of the case and also in view of the judgments relied upon by the petitioner, this petition is allowed and order dated 03.12.2018 (Annexure P-1), passed by the trial Court in Criminal Complaint No. 1624/2017 dated 12.09.2017, filed under Section 138 of the N. I. Act, vide which, the petitioner has been declared a proclaimed person as well as other consequential proceedings arising therefrom including FIR No. 66 dated 01.02.2019, registered under Section 174-A IPC at Police Station Jagadhri City, District Yamuna Nagar (Annexure P-2) are hereby quashed.

07.05.2019*Waseem Ansari***(ARVIND SINGH SANGWAN)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*