

CRM-M-43813-2018

Date of Decision:29.01.2019

BALDEV CHAND BANSAL

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rohan Jain, Advocate
for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

None for respondent No.2.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of FIR No.64 dated 15.02.2017 filed under Section 174-A of the Indian Penal Code registered at Police Station Sector-5, Panchkula and all other subsequent proceedings arising thereof as well as order dated 24.10.2016 passed by the trial Court vide which a direction was issued to register the aforesaid FIR.

On 4.10.2018 following order was passed by this Court:-

“Prayer in this petition is for quashing of FIR No.64 dated 15.02.2017 under Section 174-A IPC, registered at Police Station Sector-5, Panchkula as well as the order dated 24.10.2016 passed by the Judicial Magistrate 1st Class, in a criminal complaint filed under Section 138 of the

Negotiable Instruments Act by respondent No.2, vide which, while declaring the petitioner a proclaimed person, it was directed that an FIR be registered against the petitioner under Section 174-A IPC and on the basis of the same, the impugned FIR (Annexure P-11) was registered as well as all the subsequent proceedings arising therefrom.

*Learned counsel for the petitioner submits that after the petitioner appeared before the trial Court, the matter was compromised with respondent No.2 and respondent No.2 made a statement on 09.09.2017 before the trial Court that he has entered into a compromise with the petitioner and wants to withdraw the complaint filed under Section 138 of the Negotiable Instruments Act and later on, vide order dated 09.09.2017 (Annexure P-1), the complaint was withdrawn. Learned counsel has relied upon **Microqual Techno Limited and others Vs. State of Haryana and another, 2015 (32) RCR (Crl.) 790** to submit that when subsequent to registration of the FIR under Section 174-A IPC, the matter under Section 138 of the Negotiable Instruments Act stands compromised, the petitioner is liable to*

be discharged.

Notice of motion for 29.01.2019.

Till the next date of hearing, the trial Court is directed to adjourn the case beyond the date fixed before this Court.”

Learned State counsel, on instructions from ASI-Karnail Singh, has not disputed the fact that the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act”), during the pendency of which the petitioner was declared as proclaimed offender vide impugned order dated 24.10.2016 and simultaneously, a direction was given for registration of the FIR.

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 174A of IPC shall be nothing but an abuse of the process of law.

The counsel for the petitioner has further relied upon the statement of respondent No.2/complainant namely, Arun Nijhawan in the aforesaid complaint filed under Section 138 of the Act, wherein he has made a statement on 07.09.2017 that he has received a cheque amount of

₹2,50,000/- from the petitioner and has entered into a compromise and on the same day the trial Court adjourned the case for 09.09.2017. On that day, the complainant along with his counsel suffered a statement that he wants to withdraw the complaint and complaint was dismissed as withdrawn.

Learned counsel for the petitioner has also drawn attention to the impugned order dated 24.10.2016, wherein it is noticed that on account of the non-appearance of the petitioner he was declared proclaimed person and direction was issued to register FIR under Section 174-A of IPC and in pursuance thereof, impugned FIR was registered.

Learned counsel for the State, on instructions from ASI-Jarnail Singh, could not dispute the factual position that the aforesaid FIR was registered in pursuance of impugned order dated 24.10.2016 and the petitioner was declared as proclaimed person.

After hearing learned counsel for the parties and in view of the judgment passed in **Vikash Sharma (supra)** case, considering the fact that the complaint filed under Section 138 of the Act was compromised as the petitioner has paid the entire cheque amount to the complainant and later on the same was withdrawn on 09.09.2017, I find merit in present petition as the petitioner has also shown a *bona fide* cause for non-appearance before the trial Court on the date when the impugned order was passed on 24.10.2016. It is submitted that the service was not effected on the residential address of the petitioner and he was not aware of the fact and immediately on coming to know about the said order, he compromised the case with the complainant and the complaint under Section 138 of the Act was withdrawn later on.

In view of the same, I find merit in the present petition and accordingly, present petition is allowed and the impugned order dated 24.10.2016 passed by Judicial Magistrate, 1st Class, Panchkula as well as FIR No.64 dated 15.02.2017 registered under Section 174-A of the Indian Penal Code at Police Station Sector-5, Panchkula and all other subsequent proceedings arising thereof, are hereby quashed.

January 29, 2019

Jyoti-TN

(ARVIND SINGH SANGWAN)

JUDGE

Whether speaking/reasonedYes/NoWhether ReportableYes/No