

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

CRM-M No.54338 of 2018 (O&M)

Date of decision: 18.03.2019

Pramod Kumar and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Johan Kumar, Advocate
for the petitioners.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for quashing of FIR No.360 dated 19.07.2018 registered under Section 174-A of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Sadar Ballabgarh, District Faridabad.

Brief facts of the case are that respondent No.2 – Chandpal had filed a complaint against the petitioners, who are husband and wife under Section 138 of the Negotiable Instruments Act, 1881, during the pendency of which they were declared proclaimed offenders vide order dated 11.06.2018 and thereafter, the impugned FIR was registered as per the direction of the trial Court.

Counsel for the petitioners has submitted that since talks of compromise were going on between the petitioners and respondent No.2 and ultimately, on 25.10.2018, the same was effected on clearing

the payment of the cheque amount and a compromise was written, which was followed by moving an application by the respondent/complainant before the said Court for seeking permission to withdraw the complaint.

The trial Court recorded the statement of the complainant on 25.10.2018 that he has effected a compromise with the present petitioners and has received the cheque amount and wants to withdraw the same. On the same day the trial Court, summoned the file from the Record Room and allowed it to be dismissed as withdrawn, however, the present FIR was registered in the intervening period as the petitioners could not appear before the trial Court.

Counsel for the petitioners has submitted that in the complaint, the address of the petitioners was wrongly given as of Faridabad whereas the petitioners are permanent residents of Gurugram and therefore, the summons in the complaint under Section 138 of the N.I. Act, were issued at a wrong address at Faridabad and the petitioners were never summoned.

The petitioners on coming to know about filing of the complaint have immediately effected a compromise with the complainant and had repaid the amount.

It is worth noticing that on 07.12.2018, the petitioners were directed to appear before the Illaqa Magistrate and the Illaqa Magistrate was directed to release the petitioners on interim bail and the petitioners have already appeared before the trial Court and they have been released on interim bail.

Reply by way of affidavit of the Assistant Commissioner of

Police, Tigaon, District Faridabad filed in the Court is taken on record. It is stated in the reply that after proclamation was issued against the petitioner, on expiry of a period of 30 days, the trial Court passed the order dated 11.06.2018 declaring the petitioners as proclaimed persons and only, thereafter, a direction was issued to register the FIR under Section 174-A IPC.

In reply, counsel for the petitioner has relied upon the judgment “Microqual Techno Limited and others vs State of Haryana and another”, 2015(32) RCR (Criminal) 790, wherein it has been held that where the FIR under Section 174-A IPC is registered during the pendency of a complaint under Section 138 of the N.I. Act, which stands withdrawn later on, on the basis of the compromise, the continuation of proceedings under Section 174-A IPC is nothing but abuse and misuse of process of law.

After hearing the counsel for the parties, I find merit in the present petition. Since, it is not disputed in the reply of the Assistant Commissioner of Police, Tigaon, District Faridabad that the proceedings pending in compliance of the complaint under Section 138 of the N.I. Act stands compromised and ultimately the complaint was also withdrawn, I find that the prosecution of the petitioners, who are otherwise not served at their ordinary place of residence at Gurugram and the summons were issued at the address of Faridabad, given in the complaint, their prosecution is nothing but abuse and misuse of process of law.

Accordingly, this petition is allowed and FIR No.360 dated 19.07.2018 registered under Section 174-A IPC at Police Station Sadar

Ballabgarh, District Faridabad, stands quashed subject to payment of costs of Rs.5,000/- to be deposited with the District Legal Services Authority, Faridabad.

(ARVIND SINGH SANGWAN)
JUDGE

18.03.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No