IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.15604 of 2019 (O&M)
Decided on: 06.02.2020

Mahender Pal Jindal and others

....Petitioners

Versus

State of Haryana and another

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Cheema, Sr. Advocate
with Mr. A.S. Cheema, Advocate
for the petitioners.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting-aside the order dated 28.11.2018 passed by the trial Court in complaint No.98 dated 29.03.2017 filed under Sections 138, 141, 142 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') vide which the petitioners were declared as proclaimed persons and for quashing of FIR No.82 dated 19.03.2019 registered under Section 174-A of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Narwana City, District Jind, in compliance of the order dated 28.11.2018.

Brief facts of the case are that the respondent/complainant has filed a complaint under Section 138 of the N.I. Act against the petitioners, who are the Chairman, Managing Director and Director of M/s. Best Foods Limited with the allegations that the cheque issued on behalf of M/s. Best Foods Limited, on presentation before the Bank was

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dishonoured. Thereafter, the complainant served a legal notice and filed the complaint under Section 138 of the N.I. Act.

Learned senior counsel for the petitioners has argued that after the complaint was filed, the petitioners were never served with the summons as is clear from the report of the Process Server, who has stated that the company Best Foods has been closed and the petitioners were not found present there and the notice was served by way of affixation in Indiri village, in the open place on the wall of the premises. Learned senior counsel for the petitioners has, thus, further argued that at no point of time, the service of the petitioners was effected at the ordinary place of residence, therefore, the impugned order declaring the petitioners as proclaimed persons was without following the procedure prescribed under Sections 82/83 of the Code of Criminal Procedure (in short Cr.P.C.).

Learned senior counsel for the petitioners has further submitted that even the petitioners were availing the remedy by filing a petition before the National Company Law Tribunal under Section 9 of the Insolvency and Bankruptcy Code, 2016 and the Tribunal has appointed Interim Resolution Professional regarding the affairs of the company i.e. M/s. Best Foods Limited and therefore, the petitioners could not appear before the trial Court.

Learned senior counsel for the petitioners has lastly argued that in pursuance to the notice of motion order, the petitioners had appeared before the trial Court and they have been granted the concession of interim bail and later on, the complainant has withdrawn the complaint on 12.12.2019 by making a statement that the matter

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stands compromised and they do not want to proceed further in the complaint. Learned senior counsel has relied upon the decisions rendered by this Court in ***"Vikas Sharma vs. Gurpreet Singh Kohli and another",*** **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.

Counsel for the State could not dispute the factual position that the aforesaid FIR was registered in pursuance to the impugned order dated 28.11.2018 and the petitioners were declared as proclaimed persons and later on, they have appeared before the trial Court as per the direction of this Court and the complaint under Section 138 of the N.I. Act already stands withdrawn.

After hearing the learned counsel for the parties and in view of the judgment passed in ***Vikas Sharma's case (supra)***, considering the fact that the complaint filed under Section 138 of the N.I. Act was compromised and later on the same was withdrawn on 12.12.2019, I find merit in present petition as the petitioners have also shown a *bona fide* cause for non-appearance before the trial Court. The service was not effected at the ordinary place of residence of the petitioners and they were not aware of the said fact and immediately, on coming to know about the said order, they compromised the case with

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the complainant and the complaint under Section 138 of the Act was withdrawn later on.

In view of the above, I find merit in the petition and accordingly, the present petition is allowed and the impugned order dated 28.11.2018 passed by trial Court as well as FIR No.82 dated 19.03.2019 registered under Section 174-A IPC at Police Station Narwana City, District Jind and all other subsequent proceedings arising thereof, are hereby quashed.

(ARVIND SINGH SANGWAN)
JUDGE

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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No

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