

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-24737-2021

Date of decision : 02.12.2021

Kapil Choudhary

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Hitender Kansal, Advocate
for the petitioner.

Mr.Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of FIR no.0809 dated 11.10.2017 registered under Section 174-A IPC at Police Station Sirsa City, District Sirsa and all the consequential proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, respondent no.2 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'N.I.Act') on account of the alleged dishonour of cheque dated 08.08.2015 for an amount of Rs.2,60,000/-. It is further submitted that in the said proceedings under Section 138 N.I. Act, the petitioner was declared proclaimed person vide order dated 31.08.2017 and in the said order it was also directed that an FIR under Section 174-A IPC be registered against the petitioner. It is submitted that in the said case under Section 138 N.I. Act, compromise has

been effected between the petitioner and respondent no.2 for an amount of Rs.2,75,000/- and the petitioner has paid the said amount to respondent no.2. Statement of respondent no.2 in the said proceedings was duly recorded and thereafter, respondent no.2 had withdrawn the proceedings under Section 138 N.I. Act as is apparent from order dated 12.10.2017 (Annexure P-4). The petitioner had even applied for anticipatory bail in the present case and was granted the concession of anticipatory bail vide order dated 14.02.2020 (Annexure P-6). Thus, it is submitted that once the proceedings under Section 138 N.I. Act have been withdrawn, then continuance of the proceedings in the present FIR would be an abuse of process of the Court.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that the petitioner had delayed the trial under Section 138 N.I. Act for a period of more than 1 ½ years and thus, the present FIR has been correctly registered.

This Court has heard learned counsel for the parties.

It is not in dispute that the present FIR was registered on account of the fact that the petitioner had been declared a proclaimed person in the proceedings under Section 138 N.I. Act and in the said proceedings respondent no.2 had appeared and given a statement on 12.10.2017 that the matter has been settled and the compromise has been effected between the parties, thus, the complaint under Section 138 N.I. Act was accordingly withdrawn on the same date. The relevant portion of order dated 12.10.2017 is reproduced hereinbelow:-

*“Present:- Complainant in person with Shri. Gurdeep
Kumar Advocate.*

Accused Kapil Chaudhary, in custody

represented by Shri Amit Goyal Advocate.

Accused Kapil Chaudhary produced before me in custody as he has arrested by police. Original file be summoned from record room. Original file received, it be registered on its original number. Complainant and his counsel have also appeared. Power of attorney on behalf of accused also filed. Complainant made a statement that he has compromised the matter with the accused in the present case for a sum of Rs.2,75,000/- and this amount has been paid to him vide cheque No.980733 dated 12.11.2017 and he will withdraw all the cases against accused Kapil Chaudhary. As per compromise Suresh Kumar S/o Shri Prern Parkash who has given the above-mentioned cheque will be liable to pay this amount. He also made a statement that in view of the compromise he does not want to pursue with the present matter. In view of the statement of the complainant, present Complaint is dismissed as withdrawn. Accused would be released forthwith if not required in any other case. File be consigned to record room after due compliance.”

Learned counsel for the petitioner has submitted that the petitioner has already paid the said money as mentioned in the compromise and the matter has been settled. It is further clear that the petitioner had applied for anticipatory bail in proceedings under Section 174-A IPC and the same has been granted to the petitioner vide order dated 14.02.2020 (Annexure P-6).

A co-ordinate Bench of this Court in **CRM-M-43813-2018** titled as **“Baldev Chand Bansal vs. State of Haryana and another”**, decided on 29.01.2019 has held as under:-

“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.

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*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 (CrI.) 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.*

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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.”

A perusal of the above judgment would show that in a similar case where the FIR had been registered under Section 174-A IPC in view of the order passed in proceedings under Section 138 of the Act in the proceedings therein, while declaring the petitioner therein as proclaimed

offender, a co-ordinate Bench after relying upon various judgments observed that once the main petition under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, the continuation of proceedings under Section 174-A IPC is nothing but an abuse of the process of law. The said aspect was one of the main consideration for allowing the petition and setting aside the order declaring the petitioner therein as proclaimed person as well as quashing of the FIR under Section 174-A IPC.

Another co-ordinate Bench of this Court in a case titled as ***“Ashok Madan vs. State of Haryana and another”*** reported as **2020(4) RCR (Criminal) 87** has also held as under:-

“No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174A I.P.C. is independent of the main case, therefore, merely because the main case has been dismissed for want of prosecution, the present petition cannot be allowed, however, keeping in view the fact that the present FIR was registered only on account of absence from the proceedings in the main case which had been subsequently regularised by the court while granting bail to the petitioner, the default stood condoned. In such circumstances, continuation of proceedings under Section 174A I.P.C. Shall be abuse of the process of court.

7. Accordingly, the petition is allowed. FIR No.446 dated 21.08.2017, registered under Section 174A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

Keeping in view the above said facts and circumstances and

also the fact that the proceedings under Section 138 N.I. Act have already

been compromised and withdrawn and the continuation of the proceedings in the present FIR under Section 174-A IPC would be an abuse of process of Court, as well as in view of the law laid down in the above said judgments, the present petition is allowed and the FIR no.0809 dated 11.10.2017 registered under Section 174-A IPC at Police Station Sirsa City, District Sirsa and all the subsequent proceedings arising therefrom are hereby quashed.

(VIKAS BAHL)
JUDGE

December 02, 2021
Davinder Kumar

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