

CRM-M-26275-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-26275-2021.

Date of Decision:-24.09.2021.

Harinder Bhatia

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Vipul Sharma, Advocate for respondent No.2.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a petition under Section 482 Cr.P.C. for quashing of the order dated 14.03.2019 (Annexure P-3) passed by the Judicial Magistrate Ist Class, Faridabad, whereby, the petitioner was declared a proclaimed offender in **Complaint No.5335 of 2015** dated 21.11.2015 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter, referred to as 'the Act of 1881') titled as **"Sarvodya Hospital & Research Center Vs. M/s Indian Graphics"**.

Learned counsel for the petitioner has submitted that in the present case, respondent No.2 had filed a complaint under Section 138 of the Act of 1881 on the allegation that a cheque of Rs.1,50,000/- dated

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03.09.2015 had been dishonoured. It is further submitted that on 18.08.2018, a compromise had been effected, as per which a total amount of Rs.1,42,000/- was to be paid by the petitioner in six installments within six months. It is further submitted that on account of financial difficulties and in spite of best effort, the petitioner could not arrange the funds for paying the balance installments and, thus, he was declared a proclaimed offender *vide* order dated 14.03.2019 (Annexure P-3). It is submitted that once the petitioner was able to arrange the funds, he filed the present petition and to show his *bona fide*, he had even annexed a demand draft dated 05.07.2021 for an amount of Rs.25,000/-.

On 07.09.2021, the Co-ordinate Bench of this Court was pleased to pass the following order:-

“Case heard via video conferencing.

Learned counsel for the petitioner submits that though the order dated 22.07.2021 has not been strictly complied with in as much as the petitioner and the representative of the respondent company/firm did not appear before learned Area Magistrate concerned, to record their statements in terms of any compromise reached, however he has forwarded a demand draft for an amount of Rs.1,20,000/-, to learned counsel appearing for respondent no.2, with Mr. Vipul Sharma, Advocate, submitting that in fact the parties have today appeared before the learned Area Magistrate, where the demand draft in question is to be handed over by the petitioner.

Adjourned to 16.09.2021.

To be shown in the urgent motion list.

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Interim order to continue till the next date of hearing only and specifically.”

It is thereafter on 16.09.2021, the Co-ordinate Bench had passed the following order:-

“Case heard via video conferencing.

Learned counsel for the parties are ad idem that an amount of Rs.1,80,000/- has since been paid by the petitioner to respondent no.2, with learned appearing for the said respondent submitting that in fact the complaint itself instituted under the provisions of Section 138 of the Negotiable Instruments Act, 1881, would be probably withdrawn by the complainant on Monday.

Adjourned to 24.09.2021.

To be shown in the urgent motion list.

Interim order to continue.”

Learned counsel for the petitioner has submitted that in fact the entire matter has been resolved and an amount of Rs.1,80,000/- stands paid to the complainant and the complainant has withdrawn the complaint under Section 138 of the Act of 1881 *vide* order dated 22.09.2021.

Learned counsel for the complainant/respondent No.2 has not disputed the above-said facts and has in fact reiterated the fact that the entire amount due to the complainant has already been paid and that even the complaint under Section 138 of the Act of 1881 has been withdrawn and that the complainant has no objection in case the present petition is allowed and the order dated 14.03.2019 (Annexure P-3) is set aside.

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Mr. Manish Dadwal, learned Assistant Advocate General, Haryana, has submitted that since this is a matter under Section 138 of the Act of 1881, State has no role.

This Court has heard the learned counsel for the parties.

It is an admitted fact that the matter now stands compromised and the entire amount which was due to respondent No.2-complainant, has already been paid and in fact the complaint under Section 138 of the Act of 1881 stands withdrawn.

A Co-ordinate Bench of this Court in CRM-M-23438-2021 decided on 23.06.2021 titled as **“Priya Bhatia Vs. State of Haryana and another”** had set aside the order declaring the petitioner therein as proclaimed offender subject to the petitioner paying an amount of Rs.50,000/-. The relevant portion of the said judgment is reproduced hereinbelow:-

“I have heard learned counsel for the petitioner.

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and punishments as are passed qua the accused. If the accused shows his sincere intention and desire to appear before the Court, then it would not be unjustified to protect him from being arrested.

Keeping in view the above, the petition is allowed. Order dated 06.05.2019 (Annexure P-3), passed by Judicial Magistrate 1st Class, Faridabad, is hereby set aside subject to the petitioner's paying Rs.50,000/- to respondent

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No.2/complainant-Rashmi Kaushal Pathak, before the trial Court.

The petitioner is further directed to appear before the trial Court within 10 days from today and on her doing so and paying the amount of Rs.50,000/- to the complainant/respondent No.2, she shall be released on bail subject to furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.”

In the present case, in fact the petitioner has already paid the money and the complaint under Section 138 of the Act of 1881 has already been withdrawn, thus, the present petition deserves to be allowed.

Accordingly, the present petition is allowed and the order dated 14.03.2019 (Annexure P-3) declaring the petitioner as proclaimed offender is set aside.

(VIKAS BAHL)
JUDGE

September 24, 2021.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes/No

Yes/No