

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

(237)

CRM-M-30911-2021.
Date of Decision:-24.11.2021.

Ram Kumar Rana

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gaurav Sethi, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing of FIR No.130 dated 16.02.2020 under Section 174-A of IPC (Annexure P-7), registered at Police Station Mahesh Nagar, District Ambala and all subsequent proceedings arising therefrom as well as for quashing the order dated 05.01.2018 (Annexure P-6) passed by the Judicial Magistrate 1st Class, Ambala, whereby, the petitioner has been declared as a proclaimed offender in the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act of 1881').

On 16.08.2021, this Court was pleased to pass the following order:-

*“Learned counsel for the petitioner inter alia
contends that in the present case, a complaint under Section*

138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”), during the proceedings of which the petitioner had been declared as Proclaimed Person and the present FIR had been registered under Section 174-A of the Indian Penal Code, 1860 on account of having been declared as Proclaimed Person, has already been compromised and the complainant in the said complaint under Section 138 of the Act of 1881 has already given a statement that the matter has been settled and in fact, the said complaint under Section 138 of the Act of 1881 has already been withdrawn. It is further submitted that after the petitioner was declared Proclaimed Offender vide order dated 17.10.2017, the petitioner had appeared in the proceedings under Section 138 of the Act of 1881 and was released on bail.

With respect to the maintainability and prayer for quashing of the proceedings, learned counsel for the petitioner has relied upon following four judgments:-

- 1) *Sanjeev Bhasin Versus State of Haryana, CRM-M-40794-2020, decided on 03.03.2021.***
- 2) *Baljeet Kaur Versus State of Haryana & Anr., CRM-M-3716-2018, decided on 08.01.2020.***
- 3) *Balwant Singh versus State of Haryana, CRM-M-40851-2020, decided on 07.12.2020.***
- 4) *Microqual Techno Limited and others Versus State of Haryana and another, CRM-M-43210-2014, decided on 14.09.2015.***

Notice of motion.

On advance notice, Mr. Manish Dadwal, AAG, Haryana, appears and accepts notice on behalf of respondent No.1 and seeks time to get instructions.

Adjourned to 05.10.2021.

Notice regarding stay.”

Learned counsel for the petitioner has reiterated the arguments raised on the above-said date.

Learned State counsel, has opposed the present petition.

Respondent No.2 was served but however, nobody has put in an appearance on its behalf.

This Court has heard the learned counsel for the parties and has perused the record.

It is not in dispute that the respondent-State Bank of Patiala had filed a complaint under Section 138 of the Act of 1881 against the petitioner and in the said case, the petitioner was duly served in the same and was, accordingly, declared as proclaimed offender vide order dated 05.01.2018 passed by the Judicial Magistrate 1st Class, Ambala, who had further directed the SHO concerned to register an FIR under Section 174-A of IPC. Accordingly, the impugned FIR was registered. It is not in dispute that vide order dated 16.05.2020 (Anexure P-8), the Judicial Magistrate 1st Class, Ambala had granted bail to the petitioner after the petitioner had surrendered in the proceeding under Section 138 of the Act of 1881. It is also not in dispute that the petitioner was granted anticipatory bail in the impugned FIR under Section 174-A of IPC as is apparent from the order dated 20.05.2020 and the fact that in the proceeding under Section 138 of

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the Act of 1881, the matter has been compromised and the statement of the counsel for the complainant-Bank was recorded and accordingly, the complaint under Section 138 of the Act of 1881 was withdrawn. The order dated 22.02.2021 (Annexure P-12) is reproduced hereinbelow:-

“File taken up on the application moved by the ld. Counsel of the complainant for withdrawing of the complaint. Ld. Counsel for the complainant got recorded his statement that compromised has been effected between the parties and now nothing is due towards the accused. Therefore, he do not want to pursue with the present complaint and permission be granted to him to withdraw the complaint. Ld. Counsel for the complainant placed on file the closure letter dated 10.02.2021 and it has been further submitted that one FIR bearing No.130 dated 16.02.2020 has been registered at P S Mahesh Nagar under Section 174-A IPC and if accused moves the Hon’ble Punjab and Haryana High Court for quashing of the above said FIR then the complainant bank has no objection. Keeping in view the statement so made by the ld counsel for the complainant, he is permitted to withdraw the complaint and the present complaint is dismissed as withdrawn. Accused is hereby acquitted. His bail bonds also stands discharged. After doing needful, file be consigned to the record room.

Sd/-

*Pronounced :-22.02.2021
Magistrate Ist Class,*

Judicial

*Ambala
(UID: (HR-0460))”*

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 (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.*

xxx xxx xxx

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, while declaring the petitioner therein as proclaimed offender in the said proceedings, 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.”

A perusal of the relevant extract of the above judgment would show that where the main case was dismissed for want of prosecution, it was observed that the continuation of proceedings under Section 174-A IPC shall be an abuse of the process of court.

In the present case the complaint under Section 138 of the Act of 1881 has been withdrawn. Once the impugned case has been withdrawn, then the continuance of the prosecution in the FIR under Section 174-A of IPC would be an abuse of the process of Court. Since the said FIR was

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solely registered on account of non-appearance of the petitioner in the proceedings under Section 138 of the Act of 1881, the petitioner had even appeared in the proceedings under Section 138 of the Act of 1881 and was duly served and, thus, the impugned order declaring the petitioner as proclaimed offender deserves to be set aside.

Keeping in view the above-said facts and circumstances as well as the authorities of law referred to above, the present petition is allowed and FIR No.130 dated 16.02.2020 under Section 174-A of IPC (Annexure P-7), registered at Police Station Mahesh Nagar, District Ambala and all subsequent proceedings arising therefrom are quashed and even the order dated 05.01.2018 (Annexure P-6) passed by the Judicial Magistrate 1st Class, Ambala, whereby, the petitioner has been declared as a proclaimed person is also set aside.

(VIKAS BAHL)
JUDGE

November 24, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No