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

CRM-M-32810-2021

Date of decision : 08.11.2021

Vanki Panchalaih

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Lallan Tewari, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.800 dated 08.10.2018 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Shivaji Nagar, District Gurugram, Haryana alongwith all the consequential proceedings arising therefrom.

Learned counsel for the petitioner has submitted that one M/s Edu Smart Services Private Limited had filed a complaint (Annexure P-2) under Sections 138/142 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) read with Sections 406/420 of the IPC through its authorized person namely Shiv Charan in

the Court of Judicial Magistrate, Ist Class, Gurugram, after the cheque amounting to Rs.5,00,000/-, which is stated to have been issued by the petitioner on behalf of Audisankara Techno School, Opp Old Collectorate, Greempet, Chittoor, Nellore, Andhra Pradesh, was dishonoured. It has been argued that the petitioner who is a resident of Bangalore, Karnataka, without due service in accordance with law, was declared as proclaimed person vide order dated 31.08.2017 (Annexure P-12) passed by the Judicial Magistrate Ist Class, Gurugram. In the said order, the direction was given to send the file to the concerned Police Station to initiate the proceedings against the petitioner under Section 174-A of the IPC and thus, the present FIR dated 08.10.2018 (Annexure P-1) under Section 174-A of the IPC was registered. It is further stated that in the complaint (Annexure P-2), the compromise was effected between the parties and the complainant's (therein), debts had been satisfied and accordingly, the said complaint was withdrawn on 07.03.2019. Relevant portion of the said order dated 07.03.2019 passed by Judicial Magistrate Ist Class, Gurugram is reproduced as hereinbelow:-

“Present:- Sh. Ajay Yadav, Advocate for the complainant.

File put on an application for withdrawal in Daily Lok Adalat. Counsel for the complainant has made a statement that matter has been settled regarding cheque in question and as per the settlement, I do not wish to pursue with the present complaint, therefore, the same may kindly be dismissed as withdrawn. His statement in this regard recorded separately. Heard.

In view of aforesaid statement, present complaint is hereby dismissed as withdrawn. File be consigned to record room after due compliance.

Announced in open Court (Khushboo Goel)

07.03.2019 Judicial Magistrate Ist Class,

Presiding Officer as Daily Lok Adalat Gurugram/UID No.HR-0372”

It is further contended that the petitioner had applied for grant of concession of anticipatory bail in the present FIR and was granted the same by the Additional Sessions Judge, Gurugram vide its order dated 27.05.2021 (Annexure P-14).

Learned counsel for the petitioner has argued that since the FIR under Section 174-A of the IPC was registered on account of a lapse in appearing in the proceedings instituted under Section 138 of the Act of 1881 and once, the main proceedings under Section 138 the Act of 1881 have been withdrawn by the complainant as the matter stands compromised, no useful purpose will be served in keeping the proceedings under Section 174-A of the IPC alive.

Learned counsel for the petitioner has also stated that in the present case, the petitioner was residing in Bangalore, Karnataka and was not aware of any criminal complaint filed under Sections 138/142 of the Act of 1881 read with Sections 406/420 of the IPC and the moment, the petitioner learnt about the said complaint and the three other complaints, all the said matters were settled and the amount of Rs.32,00,000/- was

paid to the complainant as full and final settlement. Reference has also been made to various zimni orders, which also show that the petitioner was never served in the present case in accordance with law.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of State of Haryana and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the petition and has prayed for dismissal of the same. However, learned State counsel could not dispute the fact that the complaint under Sections 138/142 of the Act of 1881 read with Sections 406/420 of the IPC has been withdrawn.

This Court has heard learned counsel for the parties.

It is not in dispute that the FIR under Section 174-A of the IPC was registered at Police Station Shivaji Nagar, District Gurugram, Haryana, on account of the order dated 31.08.2017 passed by the Judicial Magistrate Ist Class, Gurugram as the petitioner could not appear on the said date and was declared a proclaimed person and a direction was given to register an FIR. The said order dated 31.08.2017 was passed in the proceedings under Section 138 of the Act of 1881 pursuant to the complaint filed by M/s Edu Smart Services Private Limited, who, as per the order dated 07.03.2019, (which has been reproduced hereinabove), has withdrawn the complaint filed under Sections 138/142 of the Act of 1881 read with Sections 406/420 of the IPC, by stating that the matter has been compromised. The petitioner is not involved in any other case. 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 of the IPC in view of the order passed in the proceedings under Section 138 of the Act of 1881, 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 of 1881 stands withdrawn in view of an amicable settlement between the parties, the continuation of proceedings under Section 174-A of the 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 a proclaimed person as well as quashing of the FIR under Section 174-A of the IPC. Another Coordinate Bench of this Court in **judgment dated 28.05.2019** passed in **CRM-M-51783-2018** titled **Ashok Madan Vs. State of Haryana and another**, has also reiterated the above proposition. In the present case, it is also apparent that the petitioner was resident of Bangalore, Karnataka, whereas the complaint was filed in District Gurugram, Haryana, and as per the zimni orders, the petitioner was not duly served in accordance with law and thus, on the said ground also, the order dated 31.08.2017, vide which the petitioner was declared proclaimed person, is bad in law. At any rate, the said proceedings have been withdrawn.

Keeping in view the abovesaid facts and circumstances,

moreso the fact that the complaint under Sections 138/142 of the Act of 1881 read with Sections 406/420 of the IPC has already been compromised and has been withdrawn and the present FIR has been registered on account of the order dated 31.08.2017 passed in the proceedings under Section 138 of the Act of 1881 and also the fact that the petitioner was not served in the said proceedings and in fact, had immediately compromised the matter after the order dated 31.08.2017 was passed and also, in view of the judgment of the Coordinate Bench of this Court in Baldev Chand Bansal's case (Supra), the present petition is allowed and FIR No.800 dated 08.10.2018 registered under Section 174-A of the IPC at Police Station Shivaji Nagar, District Gurugram, Haryana and all the consequential proceedings arising therefrom, are hereby quashed.

08.11.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**