

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

221 CRM-M-32612-2020 (O&M)
Date of decision: 12.01.2021

Surender Singh

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rakesh Bhatia, Advocate for the petitioner.

Mr. Abhinash Jain, DAG, Haryana
for the State-respondent No.1

Mr. Dharamvir Bhargav, Advocate
for the complainant-respondent No.2.

SUVIR SEHGAL J. (ORAL)

The hearing of this petition has been taken up through video conferencing on account of outbreak of novel corona virus.

CRM-26330-2020

For the reasons given in the application, same is allowed.

Zimni orders passed by the trial Court are taken on record as
Annexures P-5 to P-17.

Main case

Instant petition has been filed under Section 482 of the Code of

Criminal Procedure, 1973 for quashing of FIR No.54 dated 14.02.2020, Annexure P-4, registered under Section 174 -A of the Indian Penal Code at Police Station Chandimandir, District Panchkula and all subsequent proceedings arising therefrom. It has been further prayed that the order dated 19.12.2019, Annexure P-2, whereby the petitioner has been declared as proclaimed person be quashed.

Facts, in brief, leading to the filing of the petition are that a complaint, Annexure P-1, under Section 138 of the Negotiable Instruments Act (for short 'N.I.Act') read with Section 420 IPC was filed against the petitioner on account of dishonour of cheque of Rs.10,000/-. The petitioner was summoned but as the address given in the petition was incomplete, the service could not be effected upon him. The petitioner was declared as a proclaimed person by the trial Court vide impugned order dated 19.12.2019, Annexure P-2, consequent to which the impugned FIR, Annexure P-4 came to be lodged against him. The petitioner, in the meantime, settled the matter with the complainant and paid him the entire amount under the cheque in dispute. The complainant-respondent No.2 filed an application and withdrew the complaint vide order dated 05.03.2020, Annexure P-3.

Counsel for the petitioner has referred to the interim orders passed by the trial Court to submit that the petitioner was never served in the complaint instituted under the N.I.Act and the proceedings under Section 82 of the Code of Criminal Procedure have been initiated against the petitioner despite the fact that it had come on the record that the petitioner remained unserved. According to the counsel for the petitioner,

the petitioner was never aware of the pendency of the complaint or of the passing of the impugned order, whereby he has been declared as a proclaimed person. Still further, he submits that the dispute which resulted in the filing of the complaint has been settled and the complaint has been withdrawn. Therefore, the pendency of the proceedings under the impugned FIR cannot be sustained.

Opposing the petition, counsel for the State-respondent No.1 has submitted that the petitioner was declared as a proclaimed person after following the due process and the impugned FIR was registered on the directions of the Court. He has referred to the reply filed on behalf of the State to submit that the petitioner was arrested in the impugned FIR on 19.03.2020 and was released on bail. He further submits that after completion of the investigation, final report under Section 173 Cr.P.C. has been submitted on 19.05.2020, and the trial is fixed for 19.04.2021 for consideration of the charge.

Complainant-respondent No.2 has appeared through his counsel, who has admitted the factum of compromise between the parties. He does not have any objection, in case, the present petition is accepted.

I have considered the rival submissions of the parties.

A perusal of the interim orders passed by the trial Court shows that vide order dated 24.10.2019, Annexure P-17, the trial Court ordered initiation of proceedings against the accused-petitioner under Section 82 of the Code of Criminal Procedure despite the fact that the warrants of arrest issued to the petitioner had been received back unexecuted with the

report that the petitioner has left the given address. Without any basis, the Court formed an opinion that the petitioner is intentionally avoiding service and that he is either absconding or concealing himself. Rather the Court was duty bound to ask the complainant to furnish his fresh address and ensure that the petitioner was duly served before commencing with the coercive process.

A co-ordinate Bench of this Court in CRM-M-40162-2018, ***Madhu Wadhwa Vs. State of Haryana and another***, decided on 17.05.2019 held that despite the report of the process server that the petitioner has shifted from the address given in the complaint, the Court rather than compelling the petitioner to file correct address, chose to resort to the procedure, which was not required to be followed. The court further held that the complainant, who wants the criminal proceedings to be initiated, is duty bound to provide the correct address of the alleged accused and that there was no evidence before the Court to come to the conclusion that the petitioner is residing at the address given in the complaint or is in knowledge of the proceedings.

In view of the above, this Court has no hesitation in coming to the conclusion that the trial Court was not required to invoke the provisions of Section 82 *ibid* in the facts and circumstances of the case. Once the proceedings could not be initiated under Section 82 *ibid*, the declaration of the petitioner as a proclaimed person, vide order Annexure P-2 and the consequent registration of the impugned FIR Annexure P-4, cannot be sustained.

It may further be noticed that the accused-petitioner and the

complainant-respondent No.2 have settled the matter and the entire amount of the cheque in dispute stands paid. By order dated 05.03.2020, Annexure P-3, the complainant has withdrawn the complaint filed under Section 138 N.I.Act and he does not have any objection, in case, the impugned order and FIR are quashed. Once there is an amicable settlement between the parties and the main petition under Section 138 of N.I. Act, wherein accused was declared as a proclaimed person, stands withdrawn, proceedings under Section 174-A IPC cannot be permitted to continue. Reference in this regard is made to the judgments of this Court in *Microqual Techno Ltd. and others vs. State of Haryana and another*, 2015(32) RCR (Criminal) 790; *Rajneesh Khanna Vs. State of Haryana and another*, 2017(3) LAR 555 and CRM-M-18844-2020, *Amit Kumar Vs. State of Haryana and another*, decided on 30.10.2020.

Accordingly, the petition is allowed. The impugned order dated 19.12.2019, Annexure P-2 and FIR No. 54 dated 14.02.2020, registered under Section 174-A, IPC at Police Station Chandimandir, District Panchkula, Annexure P-4 are hereby quashed along with all consequential proceedings emanating therefrom.

12.01.2021

pooja saini

**(SUVIR SEHGAL)
JUDGE**

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No