

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

CRM-M-41261-2021

Date of decision : 26.10.2021

Daya Nand Sharma

... Petitioner

Versus

State of Haryana

... Respondent

***CORAM: HON'BLE MR. JUSTICE VIKAS BAHL***

Present: Mr.K.S.Godara, Advocate  
for the petitioner.

Mr.Gurbir Dhillon, AAG, Haryana.

**(Through Video Conferencing)**

**VIKAS BAHL, J.(ORAL)**

This is a petition filed under Section 482 of the Cr.P.C. for quashing of proclamation proceedings vide order dated 29.11.2019 (Annexure P-2) as well as FIR no.45 dated 21.01.2020 (Annexure P-3) registered under Section 174-A of Indian Penal Code, 1860 (in short 'IPC') at Police Station Hansi, City District Hansi, Haryana.

Learned counsel for the petitioner has submitted that in the present case, Dilbagh had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') after the cheque of an amount of Rs.1 lac was dishonoured. In the said case, the petitioner could not appear on 29.11.2019 and thus, was declared as a proclaimed person and the concerned SHO was directed to register an FIR under Section 174-A IPC against the petitioner. Accordingly, FIR no.45 dated 21.01.2020 under

Hansi, Haryana.

Learned counsel for the petitioner has further submitted that in the said complaint under Section 138 of the Act, compromise has been effected and the said Dilbagh had given a statement on 02.08.2021 that he does not wish to proceed with the matter. The said statement has been annexed along with petition (Annexure P-4). Reference has also been made to the order dated 02.08.2021 (Annexure P-5) vide which said Dilbagh had appeared and stated that he does not wish to pursue the complaint under Section 138 of the Act and accordingly the said complaint was dismissed as withdrawn. The order dated 02.08.2021 is reproduced hereinbelow:-

*“File put up on an application moved on behalf of complainant for withdrawing the present complaint. Complainant appeared and suffered a statement to the effect that he does not want to pursue with the present complaint and withdraws the same. Heard. In view of the statement suffered by the complainant, present complaint is hereby dismissed as withdrawn. File be consigned to record room after due compliance.”*

Learned counsel for the petitioner has also referred to the affidavit dated 07.08.2021(Annexure P-6) filed by said Dilbagh in which it has specifically been stated that the petitioner has returned the loan amount and no amount is due from the petitioner and thus, the complainant does not want to take any action against the petitioner. The relevant portion of the said affidavit is reproduced hereinbelow:-

*“2. That above-mentioned accused Daya Nanad Sharma has returned the loan amount taken from me therefore no my amount is due against the above mentioned accused and I want to dispose of this case / complaint. I do not want any action against him. And above*

*complaint dated 02.08.2021 has been decided which is attached.”*

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

Learned State counsel on the other hand opposed the petition and has prayed for dismissal of the same. However, learned State counsel could not dispute the fact that the complaint under Section 138 of the Act has been withdrawn.

This Court has heard learned counsel for the parties.

It is not in dispute that FIR under Section 174 A IPC was registered at Police Station Hansi City District Hansi, Haryana, on account of the order dated 29.11.2019 passed by the Judicial Magistrate Ist Class, Hansi. Since, on 29.11.2019, the petitioner could not appear, he was declared a proclaimed person and a direction was given to register an FIR. The said order dated 29.11.2019 was passed in a proceedings under Section 138 of the Act filed by Dilbagh against Daya Nand (present petitioner). It is further apparent that in the proceedings under Section 138 of the Act, a statement dated 02.08.2021 was made by Dilbagh which has been annexed as Annexure P-4 along with present petition wherein, he has stated that he does not want to proceed further with the complaint under Section 138 of the Act and the same be consigned to office. The order dated 02.08.2021 (Annexure P-5) which has been reproduced hereinabove would also show

that the complainant Dilbagh had appeared in Court and suffered a

statement that he does not wish to pursue the present complaint and wishes to withdraw the same and accordingly, the complaint under Section 138 of the Act had been dismissed as withdrawn. Even the affidavit dated 07.08.2021 (Annexure P-6), the relevant portion of which has been reproduced hereinabove, would also show that the petitioner has returned the loan amount to Dilbagh and no amount was due against the present petitioner. The petitioner is a 52 year old person, who is stated to be a retired professor. 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.*

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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, 1<sup>st</sup> 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, 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.

Keeping in view the abovesaid facts and circumstances, more so the fact that the case under Section 138 of the Act has already been compromised and has been withdrawn and the impugned order dated 29.11.2019 declaring the petitioner as proclaimed person was in the said proceedings under Section 138 of the Act and even the FIR in question has been registered on account of the petitioner being declared as proclaimed offender in the proceedings under Section 138 of the Act and also the fact that the petitioner is a 52 year old retired professor and that the petitioner

judgment of co-ordinate Bench in *Baldev Chand Bansal's* case (supra), the petition is allowed and the impugned order dated 29.11.2019 passed by the Judicial Magistrate Ist Class, Hansi as well as FIR no.45 dated 21.01.2020 registered under Section 174-A of the IPC at Police Station Hansi City District Hansi, Haryana and all the subsequent proceedings arising therefrom are hereby quashed.

(VIKAS BAHL)  
JUDGE

October 26, 2021  
*Davinder Kumar*

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|-----------------------------|--------|
| Whether speaking / reasoned | Yes/No |
| Whether reportable          | Yes/No |