

121

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

CRM-M-45104-2021

Date of decision : 28.10.2021

Sanjay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Narender Kaajla, 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.416 dated 12.06.2020 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station HTM, Hisar alongwith all the consequential proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, HDFC Bank had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) after the cheque amounting to Rs.8,40,000/- was dishonoured. In the said case, the petitioner, vide order dated 25.11.2019 passed by the Judicial

Magistrate Ist Class, Hisar, was declared as proclaimed person and the account of the petitioner was attached. It is submitted that the petitioner was never served before being declared as proclaimed person and immediately on coming to know about the same, he has settled the matter with the HDFC Bank and made the necessary payments, after which the HDFC Bank withdrew the complaint filed under Section 138 of the Act of 1881, as is apparent from the order dated 14.12.2019 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Hisar. The relevant portion of the said order is reproduced hereinbelow:-

“Present:- Sh. S.M. Anand, Advocate for the complainant.

Accused already declared P.O. vide order dated 25.11.2019.

File taken before National Lok Adalat.

Learned counsel for the complainant-bank has stated on 12.12.2019 that matter has been compromised with the accused and now, complainant-bank does not want to proceed further with the present complaint and withdraw the same.

Heard. In view of the statement made by the learned counsel for the complainant on 12.12.2019, the present complaint is hereby, dismissed as withdrawn. Since the complaint has been withdrawn, therefore, bank account of proclaimed person ordered to be attached/freeze vide order dated 25.11.2019, is hereby detached. Intimation to the effect be sent to the concerned Branch Manager for compliance.

File be consigned to record room, after due compliance.'

Pronounced before National Lok Adalat (Jitender Kumar)

UID No.HR0465

*Presiding Officer, National Lok Adalat
-cum-Judicial Magistrate Ist Class,
Hisar, 14.12.2019
(Rajesh Verma)
Member, National Lok Adalat
Hisar, 14.12.2019”*

It is further submitted that after the abovesaid order dated 14.12.2019 had been passed, on the basis of the order dated 25.11.2019, impugned FIR was registered under Section 174-A of the IPC on dated 12.06.2020. The petitioner had applied for bail under Section 438 of Cr.P.C. and was granted the concession of anticipatory bail by the Additional Sessions Judge, Hisar vide order dated 06.07.2020 (Annexure P-4).

Learned counsel for the petitioner has submitted 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 going.

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 Section 138 of the Act of 1881 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 HTM Hisar on account of the order dated 25.11.2019 passed by the Judicial Magistrate Ist Class, Hisar as the petitioner could not appear on the said date and was declared as proclaimed person and direction was given to register an FIR. The said order dated 25.11.2019 was passed in the proceedings under Section 138 of the Act of 1881 pursuant to the complaint filed by HDFC Bank. The HDFC Bank, as per the order dated 14.12.2019 which has been reproduced hereinabove, has withdrawn the complaint filed under Section 138 of the Act of 1881 by stating that the matter has been compromised. Even the bank account of the petitioner, which was attached, has been detached. 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.

xxx xxx xxx

*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 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 continuations 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.

Keeping in view the abovesaid facts and circumstances, moreso the fact that the case under Section 138 of the Act of 1881 has already been compromised and has been withdrawn and the present FIR has been registered on account of the order dated 25.11.2019 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 25.11.2019 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.416 dated 12.06.2020 registered under Section 174-A of the IPC at Police Station HTM, Hisar and all the consequential proceedings arising therefrom, are hereby quashed.

28.10.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**