

120(5)

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

CRM-M-48259-2021

Date of decision : 18.11.2021

Rahul Dureja and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Kunwar Rajan, Advocate for the petitioners.

Mr. Karanbir Singh, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.133 dated 25.10.2018 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Sadar Malout as well as all the subsequent proceedings arising therefrom.

Learned counsel for the petitioners has submitted 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”)

was filed in the year 2016 against the petitioners and M/s Dureja Rice Mills, for the alleged dishonour of cheque dated 05.02.2016 amounting to Rs.4,85,471/-. It is argued that the address of the petitioners/accused as mentioned in the said complaint was not correct. It is further argued that the petitioners were not aware about the pendency of the said case and even the zimni orders which have been annexed with the present petition, would prove that the petitioners were never served. The petitioners were declared as proclaimed persons vide order dated 04.07.2018 (Annexure P-6), without due service having been effected. It is further submitted that even a reading of the Proclamation dated 09.05.2018 (Annexure P-7), would show that the proclamation proceedings were not in the name of the petitioners and only in the name of M/s Dureja Rice Mills and further date given in the same was 04.06.2018. Reference to the statement of Makhan Singh, PHG dated 04.06.2018 (Annexure P-8) would show that in fact, the proclamation was affixed at the house of the petitioners, which was stated to be locked, on 31.05.2018. It is further contended that even a clear period of 30 days was not given from the date of affixation i.e. from 31.05.2018 inasmuch as the case was fixed for 04.06.2018 and the same was in violation of settled law. In order to substantiate the said argument, learned counsel for the petitioners has relied upon judgment titled **Shokat Ali Vs. State of Haryana (P&H)** ; reported as **2020(2) RCR (Criminal) 339 and Inderjit Dhamija Vs. State of Haryana, (Punjab and Haryana)** ; **Law Finder Doc Id # 1766284**.

It is further stated that the present FIR dated 25.10.2018

(Annexure P-9) had been registered solely on the basis of the order passed in the proceedings under Section 138 of the Act of 1881 and that the petitioners in fact, had appeared in the proceedings under Section 138 of the Act of 1881 and for the same, reference has been made to the order dated 09.07.2021 (Annexure P-10) vide which the petitioners have been granted bail on furnishing bail bonds/surety bonds, which had been duly accepted and they are now facing proceedings under Section 138 of the Act of 1881. It is further contended that the petitioners had also been granted the concession of anticipatory bail in the present FIR vide order dated 30.06.2021 (Annexure P-11) passed by the Additional Sessions Judge, Sri Muktsar Sahib. It is argued that the petitioners were never served in the proceedings under Section 138 of the Act of 1881 nor had any knowledge regarding the said case and at any rate, the petitioners have already appeared in the said proceedings which are stated to be pending. Learned counsel for the petitioners has very fairly stated that the petitioners are ready to pay a sum of Rs.14,000/- to the complainant i.e. M/s National Trading Co., Commission Agents through its registered partner namely Mahavir Singh, on account of the delay caused in the proceedings under Sections 138 of the Act of 1881.

Notice of motion.

On advance notice, Mr. Karanbir Singh, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court and has opposed the present petition for quashing of FIR. He has submitted that in

the present case, the petitioners have been declared as proclaimed persons and, therefore, the present FIR under Section 174-A of the IPC has been rightly registered.

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

From a comparison of the address of the petitioners mentioned in the complaint under Section 138 of the Act of 1881 (Annexure P-1) and the address of the petitioners which has been mentioned in the memo of parties in the present petition, it is clear that the address of the petitioners as has been mentioned in the complaint is not correct. A perusal of the zimni orders which have been annexed with the present petition would also show that the petitioners were never served. The proclamation dated 09.05.2018 (Annexure P-7) would show that the date fixed in the same was 04.06.2018 whereas, as per the statement of Makhan Singh, PHG dated 04.06.2018 (Annexure P-8), affixation had been done on 31.05.2018 and thus, clear period of 30 days has not been given to the petitioners for appearance. In **Shokat Ali's** case (Supra) and **Inderjit Dhamija's** case (Supra), it was held that a period of 30 days has to be given to the accused for appearance, from the date of the publication/affixation. Para 17 in **Inderjit Dhamija's** case (Supra) is reproduced hereinbelow:-

“17. Furthermore, in the present case vide order dated 02.08.2019 proclamation was ordered to be published against the petitioners under Section 82 of the Cr.P.C. requiring the petitioners to appear before the Court on

04.09.2019. The proclamation was published by SI Dharampal on 04.09.2019 and the petitioners did not get statutory minimum period of thirty days for their appearance before the Court on 04.09.2019. Vide order dated 04.09.2019 learned Chief Judicial Magistrate, Karnal adjourned the case to 05.10.2019 for awaiting the appearance of the petitioners on the ground that statutory period of thirty days had not elapsed. Learned Chief Judicial Magistrate, Karnal could not extend the time by simply adjourning the case for awaiting appearance of the petitioners and was mandatorily required to issue the proclamation again for publication thereof in accordance with the provisions of Section 82(2) of the Cr.P.C.. This conclusion is supported by judicial precedent reported as Ashok Kumar Vs. State of Haryana and another : 2013 (4) RCR (Criminal) 550.”

It is, thus, apparent that the proceedings declaring the petitioners as proclaimed persons are bad on the said account alone and thus, the registration of the FIR under Section 174-A of the IPC is illegal. It is further clear that the petitioners had joined the proceedings in the complaint case under Section 138 of the Act of 1881 and had been granted the benefit of bail as is apparent from order dated 09.07.2021 (Annexure P-10). A coordinate Bench of this Court in 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 above judgment would show that where FIR has 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 petitioners as proclaimed persons in the said proceedings, a coordinate Bench after relying upon various judgments, had observed that once the accused persons had appeared in the proceedings under Section 138 of the Act of 1881 and had been granted the concession of bail, then the effect of order declaring the accused person as proclaimed person would dissipate and the ground for registration of the FIR under Section 174-A of the IPC would no longer exist and thus, any proceeding under Section 174-A of the IPC would be an abuse of the process of the Court.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the FIR No.133 dated 25.10.2018 registered under Section 174-A of the IPC at Police Station Sadar Malout (Annexure P-9) as well as all the subsequent proceedings arising

therefrom, are quashed. The same is, however, subject to the petitioner paying an amount of Rs.14,000/- to the complainant-Mahavir Singh, on the next date of hearing or within one month, whichever is later, in the proceedings under Section 138 of the Act of 1881.

The petitioner would prepare a demand draft in the name of Mahavir Singh for an amount of Rs.14,000/- and hand over the same to the abovesaid Mahavir Singh and the said Mahavir Singh would be at liberty to encash the same. It is made clear that in case, the said amount is not paid to Mahavir Singh, as mentioned in the present order, then the present petition would be deemed to have been dismissed.

18.11.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**