

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

(117)

CRM-M-49607-2021.
Date of Decision:-26.11.2021.

Raman Jossan

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Paras Jhamb, Advocate for the petitioner.

Mr. Sarabjit Singh, AAG, Punjab.

Mr. Sanyam Khetarpal, Advocate for
respondent No.2.
(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing/setting aside the FIR No.0014 dated 22.01.2019 under Section 174-A of IPC, registered at Police Station Sardulgarh, District Mansa, Punjab (Annexure P-3), in view of the order dated 10.01.2019 (Annexure P-2) passed by the Sub-Divisional Judicial Magistrate Sardulgarh in case bearing number NACT/5/2016 titled as "Shiv Kumar Vs. M/s Surya Industries (Annexure P-1).

Learned counsel for the petitioner has submitted that in the present case, respondent No.2-Shiv Kumar had filed a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (for short 'the Act of 1881') against M/s Surya Industries and the present

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petitioner. It is submitted that the address of petitioner in the complainant was not correctly given and, thus, the petitioner was never served in the said proceedings. It was also submitted that the petitioner was declared as proclaimed person vide order dated 10.01.2019 and the Sub-Divisional Judicial Magistrate had directed the SHO to initiate proceedings against the petitioner under Section 174-A of IPC. In pursuance of the said order, the impugned FIR under Section 174-A of IPC was registered. It is submitted that the petitioner was never served in the said proceedings and learnt about the said proceedings after the police was raiding the house of the petitioner as he has been declared as proclaimed person. On learning the same, the petitioner compromised the matter with the complainant/respondent No.2 and in view of the compromise, the proceedings under Section 138 of the Act of 1881 were withdrawn. For the said purpose, the petitioner has referred to the order dated 10.07.2021 as well as the affidavit dated 20.10.2021.

Learned counsel for the complainant/respondent No.2 has not disputed the facts as stated by learned counsel for the petitioner and has further submitted that proceedings under Section 138 of the Act of 1881 have already been withdrawn and the matter has been compromised. Learned counsel for the complainant/respondent has also stated that he has no objection in case the present FIR and all subsequent proceedings arising therefrom are quashed.

Learned State counsel has opposed the present petition and has submitted that the FIR has been correctly registered.

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

A perusal of the complaint as well as the address mentioned in

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the present petition would show that the complete address of the petitioner has not been given. In the affidavit dated 28.10.2021, respondent No.2 has stated that the deponent was not aware about the true address of the petitioner and, thus, the complete particulars of the address were not given. The said affidavit is reproduced hereinbelow:-

"AFFIDAVIT"

I, Shiv Kumar s/o Sh. Hans Raj R/o Ward no.10

Sardulgarh do hereby solemnly affirm and declare as under:-

- 1. That, I deponent is permanent resident of above-mentioned address.*
- 2. That deponent has financial transaction with RamanJossan S/o Subhash Chander, therefore the aforesaid person had issued a cheque in favour of Shiv Kumar S/o Sh. Hans Raj, Sardoolgarh District Mansa.*
- 3. That the cheque issued by Raman Jossan was dishonoured therefore one complaint under Section 138 of NI Act bearing No.NACT/5/2016 was filed by the deponent against the Raman Jossan.*
- 4. That now the dispute between amicably settled by deponent and Raman Jossan has settled the accounts of deponent, therefore deponent has also withdrawn the complaint of Section 138 NI Act filed against the RamanJossan by order dated 10.07.2021.*
- 5. That the deponent was not aware about the true address of RamanJossan, that was the complete particulars of address of RamanJossan were not known to the deponent.*

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6. *That due to non-appearance of Raman Jossan in complaint under Section 138 of NI Act bearing No.NACT/5/2016. He has been declared as proclaimed person.*

7. *That the deponent has no objection if the FIR bearing No.0014 under Section 174A IPC dated 22.01.2019 registered at PS Sardulgarh, Dist. Mansa is quashed by the Hon'ble High Court.*

Dated:

Place :

VERIFICATION:-

Certified that the contents given above in my affidavit are true and correct to best of my knowledge. Nothing has been concealed therein.”

A perusal of the said affidavit would also show that it has been stated that the complaint under Section 138 of the Act of 1881 has been withdrawn as the matter has been compromised. The order dated 10.07.2021 vide which the complaint under Section 138 of the Act of 1881 has been withdrawn, the relevant portion thereof is reproduced hereinbelow:-

“Sh VC Jindal Adv, counsel for complainant.

Fine taken up before National Lok Adalat.

Complainant has already suffered a statement that compromise has been effected between him and accused and he do not want to pursue with the present complaint and withdraw the same.

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Therefore, keeping in view the said statement, present complaint is ordered to be dismissed as withdrawn being compromised. Parties shall remain bound by their statement. File be consigned to the record room.

Member Member (Gurdarshan Singh), PCS,

Sd/- Sd/- Sd/-

Presiding Officer,

Shobha National Lok Adalat

Sardulgarh

10.07.2021.”

From the above-said facts and circumstances, it is apparent that the present FIR was registered in view of the fact that the petitioner was declared as proclaimed person in the proceeding under Section 138 of the Act of 1881. The impugned complaint under Section 138 of the Act of 1881 itself has been withdrawn and even the address of the petitioner was not correctly given.

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.*

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 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

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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.

Another co-ordinate Bench of this Court in a 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 relevant extract of the above judgment would show that where the main case was dismissed for want of prosecution, it

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was observed that the continuation of proceedings under Section 174-A IPC shall be an abuse of the process of court.

In view of the above, the continuation of the proceedings under Section 174-A of IPC would be an abuse of process of the Court and, thus, the present petition is allowed and FIR No.0014 dated 22.01.2019 under Section 174-A of IPC, registered at Police Station Sardulgarh, District Mansa, Punjab (Annexure P-3) is quashed and even the order dated 10.01.2019 (Annexure P-2), declaring the petitioner as proclaimed person is also set aside.

(VIKAS BAHL)
JUDGE

November 26, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No