

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-48459-2021
Date of decision : 18.11.2021

Vishal Garg

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Inderjit Sharma, Advocate
for the petitioner.

Mr.Karanbir Singh, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 482 Cr.P.C. with a prayer for quashing of FIR no.0262 dated 06.11.2018 registered under Section 174-A IPC at Police Station Civil Lines Bathinda and all the consequential proceedings arising out of the same.

Learned counsel for the petitioner has submitted that in the present case, the petitioner had availed a loan from HDB Financial Services Ltd. and with respect to the same, the complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881(in short 'N.I.Act') read with Section 142 of N.I.Act and Section 420 IPC. It is submitted that since the address in the complaint was not correctly given, thus, the petitioner was not served and accordingly, a proclamation was issued against the petitioner on 27.08.2018 and thereafter, the petitioner was declared a proclaimed person by the Judicial Magistrate Ist Class,

Bathinda, on 20.10.2018 and the concerned SHO was directed to make necessary entry in the relevant register and to proceed under Section 174-A IPC against the petitioner. Accordingly, the present FIR was registered. It is further submitted that when the petitioner learnt about the registration of said FIR and proceedings under Section 138 N.I.Act, he had surrendered before the Court and was granted bail on the same very date, i.e. 24.05.2021. After the petitioner got the bail, he compromised the matter with the HDB Financial Services Ltd. and vide order dated 17.08.2021, the complaint under Section 138 N.I.Act was withdrawn by the complainant in view of the said compromise between the parties. Reference has been made to Annexures P-2 and P-3 which are the order as well as the statement of the complainant-HDB Financial Services Ltd. respectively, to the effect that the matter has been settled in light of which, the complaint under Section 138 N.I. Act was withdrawn. It is further submitted that the present FIR has been registered solely on account of the petitioner having been declared as proclaimed person in the proceedings under Section 138 N.I. Act and has submitted that since the FIR under Section 174-A IPC was registered on account of a lapse in appearing in the proceedings instituted under Section 138 N.I. Act and once, the main proceedings under Section 138 N.I. Act 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 IPC going.

Notice of motion.

On advance notice, Mr. Karanbir Singh, AAG, Punjab, appears and accepts notice on behalf of State of Punjab 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 N.I. Act has been withdrawn.

This Court has heard learned counsel for the parties.

It is not in dispute that the present FIR under Section 174-A IPC has been registered on account of the order dated 20.10.2018 passed by the Judicial Magistrate Ist Class, Bathinda, vide which the petitioner was declared proclaimed person in the proceedings under Section 138 N.I. Act and the concerned SHO was directed to proceed under Section 174-A IPC against the petitioner. The petitioner had surrendered on 24.05.2021 and was granted bail on the same date, i.e. 24.05.2021 in the proceedings under Section 138 N.I. Act. As is apparent from the order dated 17.08.2021 passed by the Presiding Officer, Pre Lok Adalat, the matter has been settled with the HDB Financial Services Ltd. and the said Financial Institution has withdrawn the complaint under Section 138 N.I. Act in view of the settlement. The said order dated 17.08.2021 is reproduced hereinbelow:-

“File taken up today in the Pre Lok Adalat. Vikas Verma, Power of Attorney of complainant Company is present and suffered statement that as per the instructions of complainant company, he does not want to proceed further with the present complaint and withdraws the same, as the matter has been settled and nothing is pending against loan agreement No.804433 dated 31.10.2014 of accused. In view of his statement (countersigned by his counsel), the present complaint is, hereby, dismissed as withdrawn being settled. Bail bonds and surety bonds stands discharged. Intimation in this regard be sent to the concerned Revenue Authorities, forthwith. File be consigned to the record room.”

The statement dated 17.08.2021 made on behalf of the complainant in the said proceedings under Section 138 N.I. Act, is reproduced hereinbelow:-

*“Statement of Vikas Verma Power of Attorney holder of complainant Company HDB Financial Services Limited.
(Complainant)*

As per the instruction of complainant company, I do not want to proceed further with the present complaint and I withdraw the same, as matter has been settled and nothing is pending against the loan agreement No.804433 dated 31.10.2014 of accused.

R.O.& A.C.

Sd/-

*(Reebrinder Singh Dhaliwal)
Presiding Officer,
Pre Lok Adalat cum
JMIC/17.08.2021”*

From the above, it is apparent that proceedings under Section 138 N.I. Act are no more pending and the matter has been settled.

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, 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 the proceedings under Section 138 N.I. 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 N.I. Act stands withdrawn in view of an amicable settlement between the parties, the continuations 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 a proclaimed person as well as quashing of the FIR under Section 174-A IPC.

“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.”

In the abovementioned case, the petitioner was not duly served and thus, the petitioner was not aware of proceedings under Section 138 N.I. Act and when he had learnt about the proceedings, he had surrendered and he was granted bail in the proceedings under Section 138 N.I. Act, thus on the said account also, the present FIR deserves to be quashed.

Keeping in view the above said facts and circumstances, more so, the case under Section 138 N.I. Act has already been compromised and has been withdrawn and the present FIR has been registered only on account of the order passed in the said proceedings under Section 138 N.I. Act and also the fact that the petitioner was never duly served in the said proceedings and the petitioner was also granted bail in the proceedings

under Section 138 N.I. Act and also in view of the judgment of the co-ordinate Bench of this Court in *Baldev Chander (supra)*, the present petition is allowed and the FIR no.0262 dated 06.11.2018 registered under Section 174-A IPC at Police Station Civil Lines Bathinda and all the consequential proceedings arising therefrom are quashed qua the petitioner.

(VIKAS BAHL)
JUDGE

November 18, 2021
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No