

117

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

CRM-M-49108-2021

Date of decision : 24.11.2021

Harinder Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. L.S. Mann, Advocate for the petitioner.

Mr. Sarabjit Singh, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of impugned order dated 23.01.2018 (Annexure P-4) vide which the petitioner has been declared as proclaimed offender by the Court of Judicial Magistrate Ist Class, Fatehgarh Sahib, as also FIR No.36 dated 17.03.2018 registered under Section 174-A of the Indian Penal Code, 1860 at Police Station Fatehgarh Sahib, District Fatehgarh Sahib (Annexure P-5).

Learned counsel for the petitioner has submitted that in the present case, respondent No.2 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) read with Section 357 of Cr.P.C. in which the petitioner

without due service was declared as proclaimed offender vide order dated 23.01.2018 (Annexure P-4), with further direction to register FIR against him under Section 174-A of IPC. FIR No.36 dated 17.03.2018 was registered under Section 174-A of IPC which has been impugned in the present petition on account of the said order passed. He has further argued that in the proceedings under Section 138 of the Act of 1881, the matter has been compromised and the said complaint under Section 138 of the Act of 1881 has been withdrawn. Reference in this regard has been made to order dated 20.04.2021 (Annexure P-6). It is also contended that once the proceedings under Section 138 of the Act of 1881 have been compromised and withdrawn, no purpose would be served in keeping the FIR and proceedings emanating therefrom under Section 174-A of IPC alive. It is also argued that the order declaring the petitioner as proclaimed offender is illegal inasmuch as the petitioner was never served and reference has been made to zimni orders dated 06.12.2017 (Annexure P-2) and 22.12.2017 (Annexure P-3) and it has also been submitted that the clear period of 30 days was not granted inasmuch as the proclamation was issued on 06.12.2017 but the date fixed was 22.12.2017.

Notice of motion.

On advance notice, Mr. Sarabjit 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. He has submitted that the present petition deserves to be dismissed as the petitioner has rightly been declared as proclaimed offender and the FIR

has rightly been registered.

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

It is not in dispute that the impugned FIR No.36 dated 17.03.2018 under Section 174-A of IPC was registered in view of the fact that the petitioner was declared as proclaimed offender in the proceedings under Section 138 of the Act of 1881 vide order dated 23.01.2018 (Annexure P-4). The said proceedings under Section 138 of the Act of 1881 have been compromised and the matter has been withdrawn and the complainant in the said case has received the entire cheque amount as per order dated 20.04.2021 (Annexure P-6). The said order is reproduced hereinbelow

“Jaggi Finance Vs. Harinder Kaur

*Present; Complainant with counsel Sh. GS Saini,
Advocate.*

Accused Proclaimed Person.

An application for putting the above noted case file from the record room for recording statement of complainant for withdrawing the above noted complaint has been filed by counsel for complainant. Thereafter Ahlmad was directed to put up the file after summoning from record room. Original file summoned from the record room. Ahlmad is directed to restore the file at its original number. Today counsel for complainant has suffered statement that complainant has received the entire cheques amount and he does not want to pursue the present complaint and withdraw the same. Same may kindly be dismissed as withdrawn.

In view of the statement suffered by counsel for complainant complaint stands dismissed as withdrawn being fully satisfied. Papers be consigned to record room.

Sd/-

Date of Order: 20.04.2021

(Harpreet Kaur) PCS

ACJSD-PMJJB-JMIC/FGS

UID No.PB0312”

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 IPC in view of the order passed in proceedings under Section 138 of the Act, while declaring the petitioner therein as proclaimed offender in the said proceedings, 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.

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

In the present case, it is clear from the orders dated 22.12.2017 (Annexure P-3) as well as 23.01.2018 (Annexure P-4) that the proclamation was stated to be executed on 06.12.2017 and the date fixed was 22.12.2017 and thus, a clear period of 30 days was not granted to the petitioner for appearance and thus, on the said ground also, there is violation of conditions stipulated under Section 82 of Cr.P.C. and the petitioner has been wrongly declared as proclaimed offender. At any rate, the matter has been compromised and the proceedings under Section 138 of the Act of 1881 have been withdrawn and thus, continuation of proceedings of the FIR under Section 174-A of IPC would be an abuse of

the process of the Court. Even, the order dated 23.01.2018 (Annexure P-4) deserves to be set aside in view of the fact that the main complaint under Section 138 of the Act of 1881 has been withdrawn and the order has been passed in violation of Section 82 of Cr.P.C.

Keeping in view the abovesaid facts and circumstances as well as the law laid down in the above said judgments, the present petition is allowed and impugned order dated 23.01.2018 (Annexure P-4) vide which the petitioner has been declared as proclaimed offender by the Court of Judicial Magistrate Ist Class, Fatehgarh Sahib, as also FIR No.36 dated 17.03.2018 registered under Section 174-A of the Indian Penal Code, 1860 at Police Station Fatehgarh Sahib, District Fatehgarh Sahib (Annexure P-5) and all the subsequent proceedings arising therefrom are hereby quashed.

24.11.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**