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

CRM-M-51911-2021

Date of decision : 13.12.2021

Narender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rahul Sidher, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of order dated 04.01.2019 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Jind, whereby the petitioner had been declared as proclaimed person and FIR No.80 dated 12.03.2019 (Annexure P-2) registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Civil Line Jind, District Jind and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, a complaint was filed by Abhimanyu Redu against the present petitioner under Section 138 of the Negotiable Instruments Act, 1881

(hereinafter to be referred as “the Act of 1881”) and in the said complaint, the petitioner was declared as proclaimed person vide order dated 04.01.2019 (Annexure P-1) and in the said order, direction was given to the SHO concerned for initiation of proceedings under Section 174-A of the IPC and accordingly, the FIR in question (Annexure P-2) was registered on 12.03.2019 under Section 174-A of the IPC. Learned counsel for the petitioner has further submitted that in the complaint filed under Section 138 of the Act of 1881, a compromise has been effected between the parties and the payment has been made to the said Abhimanyu Redu who had appeared and made a specific statement in this regard that nothing is due from the present petitioner and that he does not wish to proceed further with the complaint and accordingly, the complaint had been dismissed as withdrawn vide order dated 13.03.2020 (Annexure P-3).

Learned counsel for the petitioner has contended that once the proceedings under Section 138 of the Act of 1881 have been withdrawn, the continuation of proceedings under Section 174-A of IPC pursuant to the order declaring the petitioner as proclaimed person as well as directing the registration of the FIR in question, would be an abuse of the process of law.

Notice of motion to respondent Nos.1 and 2 only.

On advance notice, Mr. Manish Dadwal, AAG, Haryana, appears and accepts notice on behalf of respondent Nos.1 and 2 and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and has submitted that the petitioner has rightly been declared as proclaimed person by the trial Court.

This Court has heard the learned counsel for the parties and has

perused the paper book.

It is not in dispute that the petitioner was declared as proclaimed person vide order dated 04.01.2019 (Annexure P-1) in the proceedings under Section 138 of the Act of 1881 and it is on that account, FIR in question (Annexure P-2) under Section 174-A of the IPC was registered and in the proceedings under Section 138 of the Act of 1881, the matter has been compromised and the said complaint filed under Section 138 of the Act of 1881 had been withdrawn vide order dated 13.03.2020 (Annexure P-3) passed by the Judicial Magistrate Ist Class, Jind. The relevant portion of the said order is reproduced hereinbelow:-

*“Present: Complainant Abhimany Redhu in person with
Sh. Surender Verma, Advocate.
Accused Narender on bail with Sh. Mohit
Sharma, Advocate.*

Today the case was fixed for making remaining payment. Previous cost of Rs. 100/- paid in DLSA. Receipt placed on file. At this stage, Abhimanyu (Complainant) has appeared and vide his separately recorded statement stated that he has received payment of Rs. 50,000/- from accused and now, nothing more remains towards accused Narender. Therefore, he does not want to proceed further with the present complaint and withdraws the same. Heard. Keeping in view the statement suffered by complainant, the present complaint is hereby dismissed as withdrawn. File be consigned to record room after due compliance.

Sd/-(Sukhdev Singh)

JMIC, Jind.

UID No.HR0418.

Date of Order: 13.03.2020.”

A perusal of the above order would show that it had been specifically stated by Abhimanyu-complainant in the case under Section 138 of the Act of 1881 that he had received the payment and nothing remains due from the petitioner.

A Coordinate 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 of the IPC in view of the order passed in proceedings under Section 138 of the Act of 1881, 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 of 1881 stands withdrawn in view of an amicable settlement between the parties, the continuation 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 proclaimed person as well as quashing of the FIR under Section 174-A of the 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 of the IPC shall be an abuse of the process of court.

In the present case the complaint under Section 138 of the Act of 1881 has been withdrawn. Once the impugned case has been withdrawn, then the continuance of the prosecution in the FIR under Section 174-A of IPC would be an abuse of the process of Court.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the order dated 04.01.2019 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Jind, whereby the petitioner had been declared as proclaimed person and FIR No.80 dated 12.03.2019 (Annexure P-2) registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Civil Line Jind, District Jind and all the subsequent proceedings arising therefrom, are hereby quashed.

13.12.2021

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**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No