

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.267

CRM-M-10596-2022(O&M)

Date of decision: 12.05.2022

RAMESH WALIA

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Ms. E.K Sara, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

Ms. Kulvinder Kaur, Advocate for
Mr. Partap Singh Gill, Advocate
for the respondent No.2.

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VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of complaint No.124-A dated 07.07.2000 titled as “Balraj Kaushal Versus Ramesh Walia” (Annexure P-1) registered under Section 138 of the Negotiable Instruments Act, 1881, and all consequential proceedings including the order dated 24.10.2002, declaring the petitioner as proclaimed offender, in view of the compromise dated 12.09.2021 (Annexure P-2)

Learned counsel for the petitioner contended that the complaint under Section 138 of the Negotiable Instruments Act titled Balraj Kaushal Vs. Ramesh Walia was instituted on account of dishonour of Cheque No.186795 for an amount of Rs.50,000/-. It is evident that the accused did

not appear before the trial Court and was consequentially declared as proclaimed person, vide order dated 24.10.2002.

The compromise was eventually effected between the parties on 12.09.2021, whereafter the present petition was filed for seeking quashing of complaint and all consequential proceedings arising therefrom. It is not in dispute that despite the order declaring the petitioner as proclaimed person, no proceedings in the form of registration of FIR under Section 174 Cr.P.C have been instituted. Vide order dated 14.03.2022, the parties were relegated to the Illaqa Magistrate to get their statements recorded in relation to the genuineness and validity of the compromise. A report has been received from the Court of Judicial Magistrate, First Class, Hoshiarpur, vide memo No.178 dated 25.03.2022. The relevant extract thereof has been reproduced hereinbelow:-

As per the statements suffered by the parties i.e. the complainant and the accused/petitioners namely Ramesh Walia, they have compromised the matter, voluntarily, without any coercion or undue influence and the compromise was effected between the parties as per their free will and consent. Therefore, in light of the statements suffered by the parties and as per the terms of the compromise effected between them, it appears that the parties have entered into a genuine compromise as per their free will and without any undue influence. The parties also stated that they shall abide by the compromise arrived between them, the copy of which is Ex. C-1.

It is also reflected in the above report that the petitioner was declared as a proclaimed offender vide order dated 24.10.2002. The case was pending at the stage of recording of statement under Section 313 Cr.P.C when the petitioner had absented himself.

The counsel for the parties have reiterated the settlement voluntarily executed between the parties. It is pointed out that the provisions of Section 147 of the Negotiable Instruments Act permit

compounding of the case even at the stage of post conviction and that there are numerous judgments of this Court, where, even the FIRs that have been registered on account of proclamation of a person have been quashed on the basis of the parties having resolved their disputes. Further reference is made to settle their case before this Court, wherein, the proceedings of registration of FIR having been quashed and relied upon by learned counsel for the petitioner are extracted hereinbelow.

In order to appreciate the prayer, it would be essential to refer to certain precedent judgements dealing with the similar issue. A co-ordinate Bench of this Court in the matter of **Ashok Madan Vs. State of Haryana & Another**, passed in CRM-M-51783 of 2018 decided on 28.05.2019 held as under:-

No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174-A IPC 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 petitioners, the default stood condoned. In such circumstances, continuation of proceedings under Section 174-A IPC shall be abuse of the process of court.

Further in the matter of **Prem Bansal Vs. State of Haryana & Another** passed in CRM-M-7354 of 2022 decided on 22.02.2022, a co-ordinate Bench of this Court held as under:-

'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 petitioners 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 petitioners 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 petitioners 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 petitioners, the default stood condoned. In such circumstances, continuation of proceedings under Section 174A I.P.C. Shall be abuse of the process of court.

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 same would show that where the substantive proceedings, wherein the order declaring the petitioners-accused as proclaimed person was passed, have already been amicably resolved amongst the parties, resulting in withdrawal of the complaint or the quashing of the proceedings, the FIR registered under Section 174-A IPC, as a result of certain interim order passed in criminal proceedings, have also been quashed. The object being to secure presence of an accused and to establish rule of law so that the proceedings could be finalized. Once the parent dispute stands amicably resolved, the proceedings initiated as a result of intermediary orders would not sub-serve any interest of justice.

It is contended by learned counsel for the parties that object of proceedings under Section 138 is quasi criminal and is largely intended to ensure repayment of the amount to the person in whose favour the negotiable instrument was executed. Once the said payment has already been made, there would be no useful purpose in getting the proceedings pending.

Without going into the controversy as to whether the service was correctly and properly effected upon the petitioners in the instant case or not at this stage, and after noticing that the main case already stands settled in view of compromise executed between the parties and the complaint having been withdrawn, the registration of the instant FIR, that is only an outcome of the proceeding held in the said compliant, would not serve any purpose by keeping the present FIR and other proceedings alive.

In view of the judgments noticed above and the undisputed fact of the settlement amongst the parties, the present petition is allowed and the complaint No.124A dated 07.07.2000 titled as “Balraj Kaushal Vs. Ramesh Walia” pending in the Court of Judicial Magistrate, First Class, Hoshiarpur under Section 138 of the Negotiable Instruments Act, along with all consequential proceedings the order dated 24.10.2002 are quashed qua the petitioner, subject to payment of cost of Rs.5,000/- with the District Legal Services Authority, Hoshiarpur.

12.05.2022
Amandeep

(VINOD S. BHARDWAJ)
JUDGE

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