

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CRM-M-4761-2022

Sanjay Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

120

CRM-M-4856-2022

Sunil @ Sunil Tomar

...Petitioner

Versus

State of Haryana

...Respondent

Date of Decision :07.02.2022

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pawan Attri, Advocate for the petitioner
in CRM-M-4761-2022.

Mr. Prashant Singh Chauhan, Advocate for
Mr. Baljeet Beniwal, Advocate for the petitioner
in CRM-M-4856-2022.

Mr. Gaurav Bansal, AAG, Haryana.

Harsimran Singh Sethi, J. (Oral)

By this common order, the above mentioned two petitions are

being disposed off as both the petitions involve the same question of law.

The prayer of the petitioner(s) in these petitions is for quashing of order dated 31.10.2017 passed by the Judicial Magistrate First Class, Pehowa in complaint No.96 of 2015 dated 20.07.2015, declaring the petitioner as proclaimed person as well as FIR No.97 dated 20.02.2018 registered under Section 174-A of the IPC at Police Station Pehowa, District Kurukshetra and order dated 07.09.2019 passed by the Judicial Magistrate First Class, Faridabad in case No.10789/31.05.2016 & NACT No.2399/2016 declaring the petitioner as proclaimed person as well as FIR No.318 dated 18.09.2019 registered under Section 174-A of the IPC at Police Station Old Faridabad, District Faridabad.

Learned counsel for the petitioner(s) submits that parties have already amicably compromised their dispute and keeping in view the said compromise, the original complaint filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 (in short, N.I. Act') has already been withdrawn and therefore, the proceedings, which have been initiated against the petitioners declaring them proclaimed persons and thereafter, registration of an FIR against them under Section 174-A of the IPC during the pendency of the complaint, which now stands withdrawn, may kindly be quashed.

Learned counsel for the petitioner(s) further submits that the petition with a similar prayer came up for consideration before a Coordinate Bench of this Court and while deciding CRM-M-16101-2020 titled as **Jagat Singh vs. State of Haryana** on 11.01.2021, keeping in view the law cited therein, Coordinate Bench held that where the main complaint

filed under Section 138 of the N.I. Act stands withdrawn on the basis of amicable settlement of dispute between the parties, continuation of proceedings under Section 174-A of the IPC including the order declaring the accused as proclaimed person, shall be nothing but an abuse of process of law and the said petition was allowed. Learned counsel for the petitioner(s) submits that as the prayer of the petitioner(s) in these petitions being similar in nature to that in Jagat Singh's (supra), same may kindly be allowed and orders declaring the petitioners proclaimed persons and subsequent registration of an FIR under Section 174-A of the IPC on the basis of the said order, may kindly be quashed.

Learned State counsel submits that though, the matter has been amicably settled between the parties in these petitions and the complaints filed by complainant under the N.I. Act, have already been withdrawn but, it is the conduct of the petitioner(s), which has led them to the present situation, wherein, they have been declared initially as proclaimed persons and thereafter, an FIR under Section 174-A of the IPC has been registered against them, though, learned State counsel concedes the proposition of law that a Coordinate Bench of this Court in a somewhat similar facts and circumstances, has already accepted a plea, which is similar to the one raised by the petitioners in these petitions that once, the parties have amicably settled their dispute relating to the N.I. Act, the proceedings which arose during the pendency of the said complaint can be quashed, keeping in view the facts and circumstances of a case.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present petitions, it is the conceded position that the dispute between the parties have been amicably settled by the parties and the complaints filed by the complainant under Section 138 of the N.I. Act, have already been withdrawn by the complainant after the payment was made by the accused to the complainant to his entire satisfaction. The proceedings which have been challenged in the present petitions i.e. order declaring the petitioners proclaimed persons and registration of FIR under Section 174-A of the IPC, are before the said settlement between the parties. Though, the conduct of the petitioner(s) of evading the law is not appreciable but, this Court is to see the correlating fact that the main complaint, out of which, the proceedings, which are under challenge before this Court in the present petitions, should be allowed to continue or not in the light of the settlement arrived between the parties to the present petitions.

A Coordinate Bench of this Court while deciding CRM-M-16101-2020 titled as **Jagat Singh vs. State of Haryana** has passed the following order:-

“This petition has been filed under Section 482 of the Cr.P.C. seeking quashing of order dated 09.08.2019 (Annexure P-1) passed by the Ld. Judicial Magistrate Ist Class, Hisar, whereby the petitioner has been declared as a Proclaimed Person in case NACT-159 of 2018 titled as M/s Mescot Pharmaceutical Vs. M/s J.B. Pharma Etc. dated 12.01.2018 and for quashing of the consequential FIR No.0208, dated 03.04.2020, under Section 174-A IPC registered at Police Station Hisar Sadar, District Hisar (Annexure P-3).

[2]. Background of the matter is that NACT-159 of 2018 had been filed against the petitioner, who is the sole Proprietor of the Firm M/s J.B. Pharma, under Section 138 of the N.I. Act.

[3]. His contention in Para No.5 of the petition is that the summons were not actually served upon him, and that the Ld. JMIC, Hisar, without appreciating this fact,

on 09.08.2019, vide the impugned order (Annexure P-1) declared him to be a Proclaimed Person, following which the aforesaid FIR was drawn up against him.

[4]. It has been further submitted that subsequently the original complaint was dismissed as withdrawn by the complainant himself, in view of the amicable compromise arrived at between the parties, as can be seen from the order passed by the Ld. Trial Court on 01.11.2019 (Annexure P-2).

[5]. Reliance of the petitioner is on "*Vikas Sharma Vs. Gurpreet Singh Kohli and another*", 2017 (3) L.A.R. 584, "*Microqual Techno Limited and others Vs. State of Haryana and another*" 2015(32) RCR (Criminal) 790, "*Ved Parkash Vs. State of Haryana*", (CRM-M-21242- 2018 & CRM-M-21226-2018 decided on 21.05.2019) and "*Rajneesh Khanna Vs. State of Haryana and another*" 2017(3) L.A.R. 555, wherein in virtually identical circumstances, this Court has held that since the main complaint filed under Section 138 of the N.I. Act stands decided on the basis of amicable settlement between the parties, continuation of proceedings under Section 174-A of the IPC shall be nothing but an abuse of the process of law.

[6]. Accordingly, in view of the facts and circumstances of the case and also in view of the judgments relied upon by the counsel for the petitioner, this petition is allowed and FIR No.0208, dated 03.04.2020, under Section 174-A IPC registered at Police Station Hisar Sadar, Hisar (Annexure P-3) is hereby quashed along with all the subsequent proceedings.

[7]. Disposed off."

Another Coordinate Bench of this Court while deciding CRM-

M-31794-2020 titled as **Surender Singh vs. State of Haryana and others**

accepted the similar prayer of quashing of an FIR registered under Section

174-A of the IPC as well as the order declaring the petitioner therein as

proclaimed person. The relevant part of the order is as under:-

" __ _ I have heard learned counsel for the parties and have gone through the record.

In a decision, based on compromise, none of the parties is a loser. Rather, a compromise not only brings peace and harmony between the parties to a dispute, but also restores tranquility in the society. After considering the nature of offences allegedly committed and the fact that both the parties have amicably settled their dispute, continuance of criminal prosecution would be an exercise in futility, as the chances of ultimate conviction are bleak.

Consequently, keeping in view the fact that the

dispute has been amicably settled and in view of the law laid down by the Hon'ble Supreme Court in **Narinder Singh and others vs. State of Punjab and another, (2014) 6 SCC 466**, this petition is allowed and order dated 14.10.2019 (Annexure P-1) passed by JMIC, Kurukshetra, declaring the petitioner as a proclaimed person in NACT Complaint No.265 dated 20.02.2018 (Annexure P-2) along with proceedings initiated under Section 174-A of Indian Penal Code and all the subsequent proceedings arising out of the same are quashed qua the petitioner herein.”

Keeping in view the above proposition of law, coupled with the fact that the parties in the present petitions, have already amicably settled their dispute and the main complaints filed by the complainant under Section 138 of the N.I. Act against the petitioners/accused have already been withdrawn, no useful purpose will be achieved by keeping the present proceedings alive. The present order is being passed also keeping in view the fact that nothing has been placed on record to rebut the assertions of the petitioner(s) that they were not served before being declared as proclaimed persons, in the manner required under law and after registration of FIR under Section 174-A of the IPC, they joined the proceedings in the said FIR and are facing the trial. That being so, prayer of the petitioners as raised in the present petitions is accepted. Consequently, order dated 31.10.2017 passed by the Judicial Magistrate First Class, Pehowa in complaint No.96 of 2015 dated 20.07.2015, declaring the petitioner as proclaimed person as well as FIR No.97 dated 20.02.2018 registered under Section 174-A of the IPC at Police Station Pehowa, District Kurukshetra and order dated 07.09.2019 passed by the Judicial Magistrate First Class, Faridabad in case No.10789/31.05.2016 & NACT No.2399/2016 declaring the petitioner as proclaimed person as well as FIR No.318 dated 18.09.2019 registered under Section 174-A of the IPC at Police Station Old Faridabad, District

Faridabad are quashed.

Keeping in view the fact that the time of the Court is consumed by the petitioners, the above order will be subject to the payment of Rs.10,000/- in each petition as cost, to be deposited with Prabh Aasra, (Unit of) u/o Universal Disabled Care Taker Social Welfare Society (who are maintaining Orphans) in Bank Account No.014894600000970, Yes Bank Branch, SCO 151/152, Sector 9-C, Chandigarh or A/C No.100035657241 of Indusind Bank Sector 54 Phase II Mohali Branch by the petitioners.

February 07, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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