

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-6398-2022

Date of Decision:-06.12.2022

Gurjit Singh.

.....Petitioner.

Vs.

State of Punjab & Anr.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Brijeshwar Singh Bhalla, Advocate for the Petitioner.

Ms. Ramta Chowdhary, Deputy Advocate General Punjab.

None for the respondent no.2.

JASJIT SINGH BEDI, J.(ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of Order dated 11.12.2019 (Annexure P-4) passed by Additional Chief Judicial Magistrate, Moga whereby the petitioner was declared a proclaimed absconder in Complaint No.NACT 1035 of 2018 dated 10.08.2018 (Annexure P-1) titled as Harbhajan Singh Vs. Gurjit Singh under Section 138 of the Negotiable Instruments Act, 1881 which already stands withdrawn vide order dated 24.09.2021 (Annexure P-5) by the respondent no.2 as the matter has been compromise between the parties.

The brief facts of the case are that a complaint under Section 138 of Negotiable Instruments Act was instituted against the petitioner/accused at the instance of the complainant-Harbhajan Singh. As

the petitioner/accused did not appear before the Trial Court to face trial, he was declared a proclaimed absconder as per the order dated 11.12.2019 (Annexure P-4) in Complaint No.NACT 1035 of 2018 dated 10.08.2018 (Annexure P-1) titled as Harbhajan Singh Vs. Gurjit Singh under Section 138 of the Negotiable Instruments Act, 1881.

Subsequently, a compromise was effected between the parties and the complaint was ordered to be dismissed as withdrawn vide order dated 24.09.2021 (Annexure P-5). In view of the order dated 11.12.2019 declaring the petitioner as a proclaimed absconder, the present petition for quashing of the aforesaid Order dated 11.12.2019 (Annexure P-4) passed by Additional Chief Judicial Magistrate, Moga in case titled as Harbhajan Singh Vs. Gurjit Singh under Section 138 of the Negotiable Instruments Act, 1881 has been filed.

The learned counsel for the petitioner submits that he was never served in the said proceedings and he learnt about the said proceedings only after the police raided his house, after being declared as a proclaimed person. On learning about the same, the petitioner compromised the matter with the complainant/respondent. Thereafter, on 24.09.2021 (Annexure P-5), the learned counsel for the complainant in the Trial Court withdrew the complaint.

The learned State counsel has opposed the present petition and has submitted that the petitioner has been rightly declared a proclaimed person and the said order ought not to be quashed.

This Court has heard the learned counsel for the petitioner and the learned State counsel and has perused the paper-book.

From the above-said facts and circumstances, it is apparent that

the present that the petitioner was declared as a proclaimed person in the proceeding under Section 138 of the Act of 1881. The impugned complaint under Section 138 of the Act of 1881 itself has been withdrawn.

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 an 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, 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 considerations 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. A similar view has been expressed by this Court in “Anil Kumar Versus Jitender Kumar and another, CRM-M-5878-2022 decided on 06.04.2022”, “Anil Kumar Versus Jitender Kumar and another, CRM-M-5755-2022 decided on 06.04.2022” and “Varinder Kumar @ Virender Kumar Versus State of Haryana and another, CRM-M-42551-2021 decided on 19.04.2022”.

In the present case the proceedings under Section 138 NI Act have culminated in a settlement with the withdrawal of the complaint under Section 138 NI Act.

In view of the above, the present petition is allowed and the Order dated 11.12.2019 (Annexure P-4) passed by Additional Chief Judicial Magistrate, Moga whereby the petitioner was declared as proclaimed absconder in Complaint No.NACT 1035 of 2018 dated 10.08.2018 (Annexure P-1) titled as Harbhajan Singh Vs. Gurjit Singh under Section 138 of the Negotiable Instruments Act, 1881 is hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

December 06, 2022

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