

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

(265)

CRM-M-5943-2022

Date of Decision:-09.05.2022

Sunita

.....Petitioner

Versus

Jitender Kumar & another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Bijender Singh Dhankar, Advocate for the petitioner.

Mr. Balkar Singh, Advocate for respondent No.1.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing of the order dated 07.06.2018 (Annexure P-3) passed by the learned Judicial Magistrate, 1st Class, Jhajjar in Complaint case No.COMA/273/2017 dated 19.08.2017 (Annexure P-2) vide which the petitioner was declared as a proclaimed person in the aforesaid complaint.

The learned counsel for the petitioner has submitted that respondent No.1, namely, Jitender Kumar had lodged an FIR No.26 dated 14.01.2015 registered under Sections 420, 406, 120-B IPC at Police Station Jhajjar against Anil i.e. husband of the petitioner and her sister-in-law Seema. Ultimately, a compromise was arrived in between the parties and in pursuance of the compromise, the husband of the petitioner handed over three post dated cheques i.e. Cheques No.010352 dated 20.04.2017, 010354 dated 20.05.2017 and 536839 dated 20.06.2017 for an amount of Rs.4,00,000/-, Rs.6,00,000/- and Rs.4,00,000/-, respectively. Anil Kumar along with his sister also filed a petition bearing CRM-M-9004-2017 for quashing of the FIR on the basis of compromise. It is however submitted

CRM-M-5943-2022

that the husband of the petitioner could not arrange the money and ultimately, this Court was pleased to dismiss the quashing petition as infructuous at that stage. However, liberty was granted to file the fresh petition on the basis of compromise, if the contesting party still acknowledges the compromise in accordance with law. He contends that the cheques in question were dishonoured and the complainant lodged three separate complaints on account of all three cheques under Sections 138 and 142 of the Negotiable Instruments Act. The petitioner was summoned in the said complaint and during the pendency of the complaint in question, though the petitioner wanted to settle the dispute with the complainant-respondent No.1, however, the petitioner could not arrange the money and the petitioner also could not appear before concerned court in the said case. Ultimately, the husband of the petitioner arranged the money and again settled the matter with the complainant. It is however, submitted that on 07.06.2018, the petitioner was declared as a proclaimed person by the learned Judicial Magistrate, 1st Class, Jhajjar. It is also submitted that on 14.06.2018, the petitioner had met with an accident and she remained admitted in hospital for about 20 days and she had been operated upon thrice and her follow up treatment continued upto 05.10.2020. It is further submitted that the matter was fixed for 05.01.2022 and the complainant appeared and made a statement that he does not want to pursue the complaint as he has entered into compromise with the accused-Sunita. It is also submitted that the petitioner was never served in the said proceedings and she learnt about the said proceedings only after the police raided her house, after being declared as a proclaimed person. On learning about the same, the petitioner compromised the matter with the

CRM-M-5943-2022

complainant/respondent No.1. He has further submitted that the matter has already been compromised pursuant to which, the complainant had appeared before the learned Judicial Magistrate, 1st Class, Jhajjar on 05.01.2022 and made a statement qua the same (P-4) and (P-5), whereupon the complaint in question has been permitted to be withdrawn (P-6).

The learned counsel for the complainant/respondent No.1 has not disputed the facts as stated by the learned counsel for the petitioner and has further submitted that proceedings under Section 138 of the Negotiable Instruments Act have already been withdrawn and the matter has been compromised. He also stated that he has no objection in case the present FIR and all subsequent proceedings arising therefrom are quashed.

The learned State counsel has opposed the present petition and has submitted that the FIR has been correctly registered.

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 FIR was registered in view of the fact 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.

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

CRM-M-5943-2022

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 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

CRM-M-5943-2022

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 07.06.2018 (Annexure P-3) passed by the learned Judicial Magistrate, 1st Class, Jhajjar in Complaint case No.COMA/273/2017 dated 19.08.2017 (Annexure P-2), vide which the petitioner was declared as a proclaimed person, is hereby quashed.

09.05.2022

Jitesh

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No