

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

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**CRM-M-6231-2022
Date of decision: 21.04.2022**

JOY VARGHESE AND OTHERS

.....Petitioners

VERSUS

STATE OF HARYANA AND ANOTHER

....Respondents

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

Present: Mr. Ankush Chowdhary, Advocate for the petitioners.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G. Haryana.

Ms. Kiran Bala Jain, Advocate for respondent No.2.

VINOD S. BHARDWAJ. J.(Oral)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 0476 dated 15.11.2017 registered under Section 174-A of the IPC, Police Station, Udyog Vihar, District Gurugram (Annexure P-1) along with subsequent proceedings arising on the basis of the same.

2. Learned counsel appearing on behalf of the petitioners contends that the respondent No.2-complainant-respondent Indiabulls Housing Finance Limited had instituted the complaint under Section 138 of the Negotiable Instruments Act, 1881 on account of dishonor of a cheque. Due to failure of the petitioners to appear before the trial Court, a proclamation was made vide order dated 21.12.2016 and the petitioners were declared as proclaimed persons. Subsequently, on 12.06.2017, the respondent No.2-complainant company expressed its inability to furnish

details of the properties of the petitioner, however, account belonging to the petitioner in the Union Bank of India, Main Branch, Trivandrum, Kerala was ordered to be attached. Pursuant to the proclamation, the FIR in question was registered against the petitioner and that it is further submitted by the petitioner that when they found out about the registration of the FIR, the petitioners appeared before the competent authorities for grant of concession of bail vide orders dated 19.02.2018, 26.02.2018 and 20.03.2018 respectively.

3. That it is also pointed out that the complaint case instituted under Section 138 of the Negotiable Instruments Act, 1881 was put up in the Lok Adalat on account of a mutual resolution of the dispute amongst the parties and the respondent No.2-complainant company withdrew the aforementioned complaint case bearing No. 2991/2016 titled as *“Indiabulls Housing Finance Limited versus JAJ Enterprises and others”*. A copy of the said order dated 20.08.2018 as been appended along with the petition as Annexure P-4. It is contended by the learned counsel that as the main dispute itself stands resolved amongst the parties, no interest of justice would be advanced by continued incarceration of the petitioner in the instant case that was an outcome of failure on the petitioner to appear in the said proceedings.

4. That reliance in this regard has been placed on judgment of *“Satish versus State of Haryana”* passed in CRM-M-30999-2020 decided on 09.10.2020 as well as in the judgment of *“Microqual Techno Limited and others versus State of Haryana”* passed in CRM-M-43210 of 2014 decided on 14.09.2015. Reference was also made to the judgment passed in the matter of *“Ved Parkash versus State of Haryana”* passed in

CRM-M-21242 of 2018 decided on 21.05.2019.

5. Learned State counsel has not been able to controvert the fact of settlement amongst the parties and consequent withdrawal of the complaint under Section 138 of the NI Act in the Lok Adalat.

6. Ms. Kiran Bala Jain, Advocate appearing on behalf of respondent No.2-complaint company and has reiterated the fact that the dispute amongst the parties has already stands resolved.

7. 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:-

6.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 petitioner, the default stood condoned. In such circumstances, continuation of proceeding under Section 174-A IPC shall be abuse of the process of court.

8. 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 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.

9. A perusal of the same would show that where the substantive proceedings, wherein the order declaring the accused-petitioner 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 subserve any interest of justice. The proceedings under Section 138 of the Negotiable Instruments Act being quasi-criminal, the object is to resolve the dispute and when such an object is served, the Court should adopt a

liberal approach towards the accused who has already redressed the grievance of the complainant.

10. Taking into consideration, the judgments relied upon by the learned counsel and also the uncontroverted facts, I am of the view that continued incarceration of the petitioners would not advance any interest of justice. No larger object or justice would be served by forcing the petitioners to undergo the agony of criminal prosecution once they have already settled their principle dispute. However, taking note of the fact that the petitioners remained absent from proceedings for a period of nearly 06 years, in order to balance the equities, cost of Rs.25,000/- shall be deposited by the petitioners with the '**Poor Patients Welfare Fund**' of the **Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh**, within one month from the date of receipt of certified copy of this order.

11. The instant petition is allowed and FIR No. 0476 dated 15.11.2017 registered under Section 174-A of the IPC, Police Station, Udyog Vihar, District Gurugram (Annexure P-1) along with subsequent proceedings arising on the basis of the same is hereby quashed qua the petitioners.

The petition is allowed.

APRIL 21, 2022

Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable :	Yes/No