

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

CRM-M-7364-2020 (O & M)

Date of decision: 11.07.2022

Rajesh Rana

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Jagbir Singh, Advocate,
for Mr. Ramesh Hooda, Advocate, for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The present petition under Section 482 Cr.P.C. has been filed for the quashing of impugned order dated 23.01.2017 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Narwana in case bearing No. NACT 67 of 2016 titled as 'Rakesh versus Rajesh' vide which the petitioner was declared a proclaimed offender and quashing the FIR No.301 dated 06.11.2017 under Section 174-A IPC registered with Police Station Narwana City, District Jind (Annexure P-7) alongwith all subsequent proceedings arising therefrom.

The learned counsel for the petitioner submits that there was a money dispute between the petitioner-Rajesh Rana and the complainant-Rakesh son of Satyawan. The complainant-Rakesh filed a complaint under Sections 138 and 142 of the Negotiable Instruments Act against the petitioner-Rajesh Rana before the Judicial Magistrate Ist Class, Narwana.

The complainant-Rakesh also lodged one FIR No.91 dated 12.05.2016 under

Sections 406, 420 and 506 IPC with Police Station Kaithal Sadar, District Kaithal and also filed a complaint bearing No.117 of 2016 under Section 138 of the Negotiable Instruments Act relating to cheque No.041856 dated 25.04.2016 for an amount of Rs.4,32,000/-. The present complaint NACT/67/2016 is related to cheque No.041857 dated 02.03.2016 for an amount of Rs.4,00,000/-.

In the complaint bearing NO.NACT/67/2016, notice was issued to the petitioner after the preliminary evidence. The process server gave a report dated 18.10.2016 (Annexure P-1) that the neighbour told him that House No.914, Sector 7, Kurukshetra (the address of the petitioner given in the said complaint) was lying closed for the last many days and nobody is residing there. Thereafter, several warrants of arrest were issued against the petitioner but received back unserved. Therefore, the Trial Court vide order dated 23.11.2016 (Annexure P-2) summoned the petitioner through proclamation under Sections 82/83 Cr.P.C. for 20.01.2017. The proclamation under Section 82 Cr.P.C. was made vide order dated 13.12.2016 and a copy of the summon was affixed on the wall in the street in front of the house of the petitioner. Thereafter, the impugned order dated 23.01.2017 (Annexure P-5) declaring the petitioner a proclaimed offender was passed by the Trial Court. The petitioner appeared in the criminal complaint and was released on bail. The petitioner filed an application seeking exemption from personal appearance on 01.12.2018 and the same was allowed.

It is, thereafter, that on the basis of the order declaring him a proclaimed offender dated 23.01.2017, that the Trial Court directed the police to register an FIR and, hence, an FIR No.301 dated 06.11.2017 under

Section 174-A IPC with Police Station Narwana City, District Jind (Annexure P-7) was registered. On 23.07.2019 a compromise (Annexure P-8) was effected between the parties whereby the petitioner-Rajesh Rana paid an amount of Rs.11,00,000/- to the complainant and the complainant-Rakesh agreed to withdraw/cancel/get quashed the criminal proceedings in the complaints No.NACT/67/2016 and NACT/117 of 2016 as well as FIR No.91 dated 12.05.2016 registered with Police Station Kaithal Sadar, District Kaithal and subsequent/incidental proceedings arising therefrom.

On the basis of the compromise (Annexure P-8), FIR No.91 dated 12.05.2016 under Sections 406, 420, 506 IPC registered with Police Station Kaithal Sadar, District Kaithal, was quashed by this Court vide order dated 23.07.2019 (Annexure P-9). The complaint No.NACT/67/2016 titled as 'Rakesh versus Rajesh' wherein the impugned order dated 23.01.2017 (Annexure P-5) was passed, was dismissed as withdrawn in the National Lok Adalat vide order dated 16.09.2019 (Annexure P-10).

The learned counsel for the petitioner submits that since the complaint No.NACT/67/2016 has already been dismissed as withdrawn, therefore, the impugned order dated 23.01.2017 (Annexure P-5) and the impugned FIR No.113 dated 06.11.2017 under Sections 174-A IPC (Annexure P-7) are liable to be quashed. Reliance is placed on various judgments passed by this Court in the cases of ***“Raj Kumar versus State of Haryana, (CRM-M-5895-2012 decided on 13.09.2012), Vikas Sharma versus Gurpreet Singh Kohli and another, (CRM-M-32465-2017 decided on 13.09.2017), Rajneesh Khanna versus State of Haryana and another, (CRM-M-3813-2017 decided on 26.10.2017), Inderpal versus State of Haryana, (CRM-M-31208-2017 decided on 23.05.2018) and Vikas Gupta***

versus State of Haryana and others, (CRM-M-19636-2018 decided on 01.08.2018)”.

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.

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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 (CrI.) 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 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 a 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 impugned order dated 23.01.2017 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Narwana in case bearing No. NACT 67 of 2016 titled as ‘Rakesh versus Rajesh’ vide which the petitioner was declared proclaimed

registered with Police Station Narwana City, District Jind (Annexure P-7) alongwith all subsequent proceedings arising therefrom are hereby quashed.

CRM-10245-2022

Since the main petition has been allowed, no order needs to be passed in this application.

(JASJIT SINGH BEDI)
JUDGE

July 11, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No