

(253)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-7228 of 2022 (O&M)

Date of decision: 16.03.2022

Deepak Kumar

....Petitioner

Versus

State of Punjab and another

...Respondents

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

Present:- Mr. Munish Puri, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

Ms. Deepti Rampal, Advocate
for respondent No.2.

VINOD S. BHARDWAJ, J.(Oral)

The question that arises for consideration in the instant petition is that as to whether an FIR registered under Section 174-A of the IPC on account an order passed in criminal complaint due to non-appearance of an accused, can be quashed as the original complaint stands amicably settled amongst the parties.

The instant petition has been filed under Section 482 Cr.P.C., for quashing of order dated 30.10.2019 (Annexure P-13) passed in case bearing No.NIact/816/2017 dated 14.11.2017 titled as 'Parshotam Lal Vs. Deepak Kumar' vide which petitioner was declared as proclaimed person as well as the subsequent FIR bearing No.108 (Annexure P-1) under Section 174-A dated 01.12.2019, registered at Police Station Division No.1, District Pathankot and all other consequential proceedings arising therefrom.

The brief facts of the petition are that the respondent No.2 had filed the complaint under Section 138 of the Negotiable Instruments Act on account of dishonour of cheque bearing No.13 dated 24.08.2017 amounting to Rs.45,000/-. Bailable warrants of the petitioner were issued vide order dated 16.07.2018 and thereafter non-bailable warrants also remained unserved. Consequently, a proclamation was issued vide order dated 02.05.2019. Consequently resulting in declaration of the petitioner as a proclaimed person vide order dated 30.10.2019.

The instant FIR was an outcome of the said order declaring the petitioner as proclaimed offender.

Learned counsel for the petitioner has raised a challenged to the order whereby he was declared as a proclaimed person and has strenuously argued that perusal of the complaint (Annexure P-2) shows that no specific address of the petitioner had been given even though the petitioner was a resident of house No.54/73, PWD Office, District Pathankot. Resultantly, service had never been effected upon the petitioner at the address on which he resided. Further arguments is made on behalf of the counsel for the petitioner that the continuation of the proceedings would not serve any purpose since the main case has already been settled between the parties and consequent upon the settlement arrived at, the payment was made and the complaint was withdrawn in the National Lok Adalat. He has drawn reference to order dated 08.02.2020 pronounced in the Lok Adalat and appended as Annexure P-16. The same is extracted as under:-

"Present: Sh. Satish Saini counsel for complainant.

File taken up in National Lok Adalat by this bench as per letter received vide endst No.265 dated 07.02.2020 of Ld. District and Sessions Judge cum Chairman DLSA Pathankot.

Heard. In view of the statement already suffered by counsel for complainant on 20.01.2020, the matter has been compromised and he do not want to proceed further with this complaint. As

such present complaint stands dismissed as withdrawn. File be consigned to record room Pathankot.

*Pronounced in the National Lok Adalat
Dated: 08.02.2020*

*Rajinderpal Singh Gill, PCS
Presiding Officer,
National Lok Adalat,
Bench No.6 Pathankot*

*Members National Lok Adalat
Sh. Vikramjeet Rai Adv.*

*Ms. Suman Kumari, Professor
GNDU College Pathankot.”*

Learned State counsel appearing on behalf of the respondent-State has not raised any serious challenge to the proceedings.

Ms. Deepti Rampal, Advocate, appears on behalf of respondent No.2 and she has acknowledged the fact of the compromise executed amongst the parties and the consequent withdrawal of the complaint. She has no objection to quashing of the impugned order dated 30.10.2019 as well as the FIR No.108 dated 01.12.2019 under Section 174-A, registered at Police Station Division No.1, District Pathankot.

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

Without going into the controversy pertaining to the actual service and the legality of the order declaring in the petitioner as a proclaimed person, I find that there is substance in the argument raised by the petitioner that once the proceedings in the criminal complaint wherein a declaration of the petitioner/accused as a proclaimed person was passed, stand mutually settled and withdrawn, the continuation of the FIR and consequential proceedings registered under Section 174-A IPC would not advance any interest of the justice.

I am fortified in my opinion on the strength of the personal judgment of this Court which are extracted as under:-

“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. ”

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.

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 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.

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 aforesaid judgment would show that the precedent judgment of this Court have quashed the proceedings arising as a result of order declaring as a proclaimed person and the consequent registration of the FIR under

Section 174-A IPC not advancing any interest of the justice and to be a mere protraction of an agony of criminal trial upon an accused. The object behind declaration of a proclaimed person is to ensure the presence of an accused before a Court of law and for finalisation of the proceedings initiated against such an accused. The said object stands fully satisfied because the accused has already settled the given complaint.

In view of the same, the instant petition is allowed, the order dated 30.10.2019 as well as FIR No.108 dated 01.12.2019 under Section 174-A, registered at Police Station Division No.1, District Pathankot are quashed, subject to payment of cost of Rs.10,000/- by the petitioner to be deposited 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.

(VINOD S. BHARDWAJ)
JUDGE

March 16, 2022

rekha sharma

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*