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

CRM-M-7354-2022 (O&M)
Date of decision : 22.02.2022

Prem Bansal

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Karan Garg, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.390 dated 09.06.2020 (Annexure P-1) registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Hisar City, District Hisar and all the subsequent proceedings arising therefrom as also for setting aside the order dated 04.07.2019 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Hisar vide which the petitioner has been declared as proclaimed person.

Learned counsel for the petitioner has submitted that in the present case, Prhlad Singh Saini @ Prhlad Singh had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to

be referred as “the Act of 1881”) for dishonour of cheque dated 09.05.2017 amounting to Rs.6,00,000/- drawn on Punjab National Bank, G.J.U., Hisar. It is further submitted that in the said proceedings, the petitioner was never served and was illegally declared as proclaimed person vide order dated 04.07.2019 (Annexure P-2) and on the same date, the Judicial Magistrate Ist Class, Hisar had directed for registration of the FIR under Section 174-A of the IPC and in pursuance of the said order, the present FIR was registered on 09.06.2020. It is contended that the moment, the petitioner learnt about the said proceedings, the petitioner compromised the matter with the complainant in complaint case filed under Section 138 of the Act of 1881 and in view of the said compromise, the complaint filed under Section 138 of the Act of 1881 has been withdrawn on 16.04.2021 (Annexure P-8). It is further contended that since the complaint has been withdrawn, thus, the continuation of the proceedings under Section 174-A of the IPC instituted in pursuance of the order declaring the present petitioner as proclaimed person are abuse of the process of the Court and same are liable to be quashed/set aside.

Notice of motion to respondent No.1 only.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State/respondent No.1 and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and has submitted that the impugned order passed declaring the petitioner as proclaimed person as well as registration of FIR are in accordance with law and thus, deserve to be upheld.

This Court has heard the learned counsel for the parties and has perused the paper book.

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.

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 of the IPC shall be an abuse of the process of court.

In the present case, complaint under Section 138 of the Act of 1881 was filed by Prhlad Singh Saini @ Prhlad Singh for dishonour of cheque dated 09.05.2017 amounting to Rs.6,00,000/-A perusal of the zimni orders would show that the petitioner was never duly served in the said proceedings. The petitioner was declared as proclaimed person vide order dated 04.07.2019 (Annexure P-2). On the same date, the Judicial Magistrate Ist Class, Hisar had directed the SHO of the concerned Police Station to register an FIR under Section 174-A of the IPC i.e. the present FIR. The said FIR was registered on account of non-appearance of the petitioner in proceedings under Section 138 of the Act of 1881. The petitioner has compromised the matter with the said complainant in proceedings under Section 138 of the Act of 1881 and the complaint filed under Section 138 of the Act of 1881 has been withdrawn as is apparent from order dated 16.04.2021 (Annexure P-8) passed by the Judicial Magistrate Ist Class, Exclusive Court, NI Act, Hisar. The relevant portion of the said order is reproduced here as under:-

*“Present: Complainant in person with Sh. D.V. Soni,
Advocate.*

Original file received from record room on the application, which was moved by learned counsel for the complainant. Ahlmad is directed to restore the case at its original number.

Complainant duly identified by his counsel has made a statement that he has compromised the matter with the accused, therefore, he wants to withdraw the same. Heard.

In view of the statement made by complainant duly identified by his counsel, the present complaint is hereby dismissed as withdrawn.

File be consigned to record room after due compliance.

*Pronounced in open Court:- Sd/- (Jitender Kumar)
JMJC, Exclusive Court N.I. Act
Hisar, UID No.HR0465*

Date of Order: 16.04.2021”

Once the proceedings under Section 138 of the Act of 1881 have been withdrawn, then, keeping the present FIR registered under Section 174-A of the IPC alive would be an abuse of process of the Court. Even, order dated 04.07.2019 (Annexure P-2), vide which the petitioner has been declared as proclaimed person in the proceedings under Section 138 of the Act of 1881, deserves to be set aside.

Keeping in view the abovesaid facts and circumstances as well as the authorities of law referred to hereinabove, the present petition is allowed and FIR No.390 dated 09.06.2020 registered under Section 174-A of the IPC (Annexure P-1) at Police Station Hisar City, District Hisar and all the subsequent proceedings arising therefrom are quashed and order dated 04.07.2019 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Hisar vide which the petitioner has been declared as proclaimed person, is

set aside.

No notice is being issued to respondent No.2 in the present case as respondent No.2 is not the complainant in the present FIR, the quashing of which is being sought, and at any rate, the said respondent No.2 has withdrawn the proceedings under Section 138 of the Act of 1881 on the basis of compromise as is apparent from the order dated 16.04.2021 (Annexure P-8). The issuance of notice to respondent No.2 would not only delay the adjudication of the present case, but would also cause unnecessary financial expenditure to be incurred by respondent No.2 who would then be required to appear before this Court through his counsel. Moreover, no order prejudicial to the rights of respondent No.2 is being passed.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

22.02.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No