

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(240)

CRM-M-7847-2022

Date of decision: - 11.03.2022

Lt. Col. Dharmender Singh

....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Dinesh Arora, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Mr. Khalid Tauru, Advocate
for Ms. Kiran Bala Jain, Advocate
for respondent No.2.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.683 dated 24.09.2018 (Annexure P-1), registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Shivaji Nagar, District Gurugram and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, respondent No.2 had filed a complaint under Section 25 of the Payment and Settlement Systems Act, 2007 read with Section 357 of

the Code of Criminal Procedure, 1973 against the petitioner. It is further submitted that in the said case, summoning order dated 19.04.2017 (Annexure P-3) was passed, but however, since the petitioner is a Lt. Col. in the Army and was never duly served in the said proceedings, thereafter, on 30.08.2018, the petitioner could not appear before the Court and on account of that he was declared a proclaimed person. The Judicial Magistrate 1st Class, Gurugram by the order dated 30.08.2018 (P-3) while declaring the petitioner as proclaimed person, had also directed the police station to initiate proceedings against the petitioner under Section 174-A IPC. It is on the basis of the said order that the present FIR has been registered against the petitioner. Learned counsel for the petitioner has further pointed that immediately after the petitioner learnt about the said proceedings, the matter was settled with respondent No.2 and respondent No.2, vide order dated 15.03.2019, had withdrawn his complaint as the matter had been compromised. It is submitted that since the main complaint has been withdrawn by the complainant, thus, the continuance of the proceedings in the present FIR would be an abuse of the process of Court. Learned counsel for the petitioner has relied upon a judgment of 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***.

Learned State counsel has opposed the present petition and has stated that the petitioner had been declared as proclaimed person in accordance with law and the present FIR has been registered against him after an order was passed by the Judicial Magistrate 1st Class, Gurugram

to that effect.

Learned counsel appearing on behalf of respondent No.2 has submitted that the main complaint has already been withdrawn by respondent No.2 as the matter has been compromised and he has no objection in case the present petition is allowed and the FIR is quashed.

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

A co-ordinate Bench of this Court in **Baldev Chand Bansal's case (supra)** 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, a coordinate 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 abuse of the process of court.

In the present case, it is not in dispute that respondent No.2 had filed a complaint under Section 25 of the Payment and Settlement Systems Act, 2007 read with Section 357 of the Code of Criminal Procedure, 1973 against the petitioner and in the said complaint, summoning order dated 19.04.2017 (P-3) was passed. It is the case of the petitioner that he being a Lt. Col. in the Army was never duly served in the said proceedings and on account of his non-appearance, order dated 30.08.2018 (P-4) declaring him as proclaimed person was passed. It is by the said order that the Judicial Magistrate 1st Class, Gurugram directed the police station to initiate the proceedings under Section 174-A IPC against the petitioner and thereafter, the present FIR has been registered. It is not disputed that the said complaint has already been compromised and has been withdrawn by respondent No.2. The order dated 15.03.2019 passed by the Judicial Magistrate 1st Class, Gurugram in this regard, is as under: -

*"Present: AR for complainant with Sh. Anurag Yadav,
Advocate.*

File received from record room. It be restored to its original number.

AR for the complainant has made a statement that he does not want to proceed further with the present complaint and same may be dismissed as withdrawn. His statement in this regard recorded separately. Heard.

In view of aforesaid statement, present complaint is hereby dismissed as withdrawn. File be consigned to record room after due

compliance.

Announced in Daily Lok Adalat

(Vivek Tomar)

15.03.2019

*Judicial Magistrate 1st Class,
Gurugram/ UID No.HR0437."*

From the above facts, it is apparent that the petitioner was not duly served in proceedings under Section 25 of the Payment and Settlement Systems Act, 2007 read with Section 357 of the Code of Criminal Procedure, 1973 and the said complaint has been withdrawn by the complainant on account of the compromise effected between the parties. In the said facts and circumstances, the continuation of proceedings in FIR registered under Section 174-A of the IPC would be an abuse of process of Court.

Keeping in view the above said facts and circumstances, as well as the law laid down in the above said judgments, the present petition is allowed and FIR No.483 dated 17.02.2020 registered under Section 174-A of the IPC, at Police Station Shivaji Nagar, District Gurugram and all the subsequent proceedings arising therefrom are hereby quashed/set aside.

March 11, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes