

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of decision : 10.02.2022

1.

CRM-M-9497-2021

Ramphal

... Petitioner

Versus

State of Haryana and others

... Respondents

2.

CRM-M-4549-2021

Bhoma Ram

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Manish Mehta, Advocate
for the petitioner in both the petitions.

Mr.Manish Dadwal, AAG, Haryana.

Mr.Saurabh Bhardwaj, Advocate
for respondents no.2 & 3-HDFC Bank.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This order will dispose of aforesaid two petitions, i.e. CRM-M-9497-2021 and CRM-M-4549-2021.

The first petition, i.e. CRM-M-9497-2021 has been filed by Ramphal and the second petition, i.e. CRM-M-4549-2021 has been filed by Bhoma Ram. In both the petitions, challenge is to the order dated 22.01.2020 declaring the petitioners Ramphal and Bhoma Ram as

proclaimed persons in case COMA/1565/2017 and also for quashing of FIR no.121 dated 13.03.2020 registered under Section 174-A IPC, at Police Station Bhiwani Civil Lines, District Bhiwani and all the subsequent proceedings arising therefrom.

Challenge is to the common order and to the common FIR and with the consent of both the parties, the facts are being taken from CRM-M-9497-2021 which is taken as the lead case.

Respondents no.2 and 3-HDFC Bank had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short “N.I.Act”) against Ramphal and his father Bhoma Ram. In the said case, both the said persons were declared as proclaimed persons vide order dated 22.01.2020 as they did not appear on the said date. The Judicial Magistrate Ist Class, Bhiwani had also directed the SHO of concerned Police Station to register an FIR under Section 174-A IPC.

In pursuance of the order passed by the Judicial Magistrate Ist Class, Bhiwani, the present FIR under Section 174-A IPC was registered against both the said persons.

Learned counsel for the petitioners and for the respondents-HDFC bank have jointly argued that in the case under Section 138 of the N.I. Act, the compromise has been effected and the respondent bank has withdrawn the complaint vide order dated 03.02.2021.

Learned counsel for respondents no.2 and 3 have submitted that they have filed an affidavit in the present case to the effect that they have compromised the matter and they have no objection in case the present petitions are allowed.

Learned State counsel has however opposed the present petition.

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

It is not in dispute that Ramphal and Bhoma Ram have been made accused in FIR no.121 dated 13.03.2020 registered under Section 174-A IPC on account of the order passed by the Judicial Magistrate Ist Class, Bhiwani, dated 22.01.2020 in the proceedings under Section 138 of the N.I. Act as the above said persons had not appeared in the said proceedings and were declared as proclaimed persons. It is not in dispute that there has been compromise effected in the proceedings under Section 138 of the N.I. Act and the complaint under Section 138 of the N.I. Act has been withdrawn vide order dated 03.02.2021, the said order is reproduced hereinbelow:-

“Present: Mr.Ranvijay Singh, Advocate for complainant.

File put up before me as an application for granting permission to withdraw the complaint moved by learned counsel for complainant.

Heard.

Keeping in view the facts mentioned in the application and in the interest of justice, application in hand stands allowed.

Learned counsel for complainant has prayed for summoning the original file from the record room.

Original file received from the record-room.

Ahlmad is directed to restore the original file on its original number.

Learned counsel for complainant has

suffered a statement in writing to the effect that he does not want to pursue the present complaint and prayed for withdrawing the same.

Heard.

In the interest of justice, request allowed.

In view of the statement, the present complaint stands dismissed as withdrawn. File be consigned to the record room after due compliance.

Pronounced in Daily Lok Adalat

Date of order: 03.02.2021

Sonia (steno-Gr.II)

*(Amit Sheoran)
JMIC, Bhiwani
UID No.HR0430”*

Learned counsel appearing for respondents no.2 and 3 has also produced an affidavit which has been filed in the present case as per which the facts with respect to the compromise has been reiterated. The relevant portion of the said affidavit is reproduced hereinbelow:-

“2. That the contents of the application are read over & explained to me in my vernacular language, which is true and correct to my knowledge and nothing has been concealed there from. During the pendency of complaint; the petitioner-accused accepted his liability & approached the bank with a proposal to settle the matter. In consequence of compromise the applicant-bank has recovered amount of Rs.4,93,600/- as per settlement & the accounts of the petitioner-accused has been closed. In consequence the applicant-bank already withdrawn its complaint from the Ld. Trial Court against the petitioner. The bank has no objection of the offence against the accused- petitioner be compounded/ quashed it otherwise permitted as per law.

3. That now no grudge is left between both the parties. Both the parties have decided that they will not initiate any action against each other before any

criminal or civil court.

4. *That all the claims between both the parties have been settled and conditions set forth in the Compromise Deed.*

5. *That both the parties shall remain bound by the terms and conditions set forth in the Compromise Deed.*

Place: Chandigarh

DEPONENT

Dated: 20.01.2022

Verification:

Verified that the contents of Para's No. 1 to 5 of my above affidavit are true and correct to my knowledge and belief. No part of it is false and nothing has been concealed therein.

Place: Chandigarh

DEPONENT

Dated: 20.01.2022”

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.

xxx xxx xxx

*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 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 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 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)**

“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 abuse of the process of court.

In the present case as is apparent from the facts hereinabove, the complaint under Section 138 of the N.I. Act has been withdrawn on account of compromise. In such a situation, continuation of the proceedings under Section 174-A IPC would be an abuse of process of Court.

Keeping in view the above said facts and circumstances as well as law laid down in the above said judgment, both the petitions are allowed and the order dated 22.01.2020 (Annexure P-1) declaring Ramphal and Bhoma Ram as proclaimed persons is set aside and FIR no.121 dated 13.03.2020 registered under Section 174-A IPC, at Police Station Bhiwani

Civil Lines, District Bhiwani and all the subsequent proceedings arising therefrom are hereby quashed.

(VIKAS BAHL)
JUDGE

February 10, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No