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

CRM-M-9037-2022

Date of decision : 03.03.2022

Kiran Verma

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashish Bansal, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.483 dated 17.02.2020 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 also for quashing of impugned order dated 20.12.2019 (Annexure P-9), whereby the petitioner has been declared as proclaimed person in the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”).

Learned counsel for the petitioner has submitted that

respondent No.2 had filed a complaint under Sections 138 and 142 of the Act of 1881 against the present petitioner for dishonour of cheque dated 30.01.2015 amounting to Rs.11,000/-. It is further submitted that in the said case, as apparent from the zimni orders, the petitioner was never served and thus, the petitioner was illegally declared as proclaimed person vide order dated 20.12.2019 (Annexure P-9). It is argued that in the said order, the compliance/status report of the proceedings so taken by the police, was awaited and thereafter, FIR No.483 under Section 174-A of the IPC was registered by the police. It is further argued that the petitioner was arrested in both the cases and has been released on bail in both the cases vide orders dated 02.08.2021 (Annexures P-11 and P-13 respectively). It is contended that in the proceedings under Section 138 of the Act of 1881, compromise has been effected and the complainant has withdrawn his complaint filed under Section 138 of the Act of 1881 since, the amount of Rs.11,000/- has been paid to the said complainant.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and submitted that once the petitioner was declared as proclaimed person, it was incumbent upon the State to have register FIR under Section 174-A of the IPC, thus, the said FIR has been rightly registered.

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, 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 abuse of the process of court.

In the present case, the complaint had been filed by Fincruise Credit Services Private Limited against the present petitioner for dishonour of cheque dated 30.01.2015 amounting to Rs.11,000/-. A perusal of the zimni orders moreso, the orders dated 20.08.2018 and 16.08.2019 would show that the petitioner was never served in the said proceedings. Order dated 20.12.2019 vide which, the petitioner was declared as proclaimed person was thus, passed without due service of the present petitioner. FIR No.483 under Section 174-A of the IPC was registered on account of the petitioner having been declared as proclaimed person in the proceedings under Section 138 of the Act of 1881. The petitioner has already joined the proceedings under Section 138 of the Act of 1881 and has been granted bail as is apparent from order dated 02.08.2021 (Annexure P-11). The case under Section 138 of the Act of 1881 has already been compromised and the cheque amount has already been paid to the complainant and the complainant has

withdrawn the complaint filed under Section 138 of the Act of 1881 as is apparent from order dated 08.09.2021 (Annexure P-12). Relevant portion of the order dated 08.09.2021 is reproduced hereinbelow:-

“Fincruise Vs. Kiran

16047

Present: Sh. Amit Kumar Tyagi, Advocate for complainant.

Learned counsel for the complainant has made a statement that he does not want to proceed further with the present complaint on the instructions of complainant company as he has received Rs.11,000/- cash from accused regarding cheque in question 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 open court.

*Sd/- (Puneet Limbha),
Judicial Magistrate First Class,
Gurugram/UID No.HR0398*

Date of Order: 08.09.2021”

From the above facts, it is apparent that the petitioner was not duly served in proceedings under Section 138 of the Act of 1881, the petitioner has also joined the proceedings under Section 138 of the Act of 1881 and the complaint filed under Section 138 of the Act of 1881 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. Moreover, in the present

case, the FIR under Section 174-A of the IPC was registered on account of non-appearance in the trial Court, subsequently the petitioner has appeared before the trial Court and was acquitted and thus, even the non-appearance stands regularised in view of the subsequent appearance of the petitioner.

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 Indian Penal Code, 1860 at Police Station Shivaji Nagar, District Gurugram, as also impugned order dated 20.12.2019 (Annexure P-9) and all the subsequent proceedings arising therefrom are hereby quashed/set aside.

03.03.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**