

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

(271)

CRM-M-10699-2021(O&M)
Date of Decision:-29.09.2022

ANUP SINGH

.....Petitioner

Versus

STATE OF HARYANA & ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.K. Rohilla, Advocate for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing of the impugned order dated 29.02.2020 (Annexure P-3) passed by the learned Judicial Magistrate, 1st Class, Bhiwani, whereby the petitioner has been declared a proclaimed person in complaint case No.COMA 2235/2018 dated 23.07.2018 registered under Section 138 of Negotiable Instruments Act read with Section 420 of IPC titled as Rajpal Versus Anu Singh for quashing of FIR No.0048 dated 23.02.2021 registered under Section 174-A IPC at Police Station Bhiwani Civil, District Bhiwani (Annexure P-6) and all subsequent proceedings arising therefrom.

The brief facts of the case are that the petitioner/accused had borrowed a sum of Rs.35000/- from the complainant/respondent No.2 in the month of October, 2017 for his personal needs and necessity and to make repayment and in order to discharge his legal liability issued a cheque

bearing No.731424 dated 11.04.2018 for Rs.35000/- drawn from the State Bank of India. However, the cheque was dishonoured. The complainant/respondent No.2 served a legal notice vide registered post on 25.06.2018. Thereafter, a complaint under Section 138 of the Negotiable Instruments Act read with Section 420 IPC was filed by respondent No.2/complainant against the petitioner alleging therein that a cheque was issued by the petitioner in favour of the complainant and the same was dishonoured. The photocopy of the complaint dated 23.07.2018 is annexed as Annexure P-1 to the petition. As the petitioner/accused did not appear before the Trial Court to face trial, he was declared a proclaimed person as per the order dated 29.02.2020 (P-3) pursuant to which an FIR No.0048 dated 23.02.2021 registered under Section 174-A IPC at Police Station Bhiwani Civil, District Bhiwani (Annexure P-6) came to be instituted against him.

Subsequently, a compromise was effected between the parties and the complaint was ordered to be dismissed as withdrawn in terms of the order dated 25.03.2021 and the same is marked as 'X'. In view of the dismissal of the complaint under Section 138 of Negotiable Instruments Act on the basis of the compromise, the present petition for quashing of aforesaid impugned order dated 29.02.2020 (Annexure P-3) and FIR No.0048 dated 23.02.2021 (P-6) has been filed.

The learned counsel for the petitioner submits that he was never served in the said proceedings and he learnt about the proceedings only after the police raided his house, after being declared a proclaimed person. On learning about the same, the petitioner compromised the matter with the complainant/respondent. Thereafter, on 25.03.2021 (Mark 'X'), the

learned counsel for the complainant in the Trial Court got recorded his statement that as per his instructions, the complainant did not want to proceed further with the present complaint and wanted to withdraw the same. Based on the said statement, the complaint was dismissed as withdrawn on 25.03.2021 (Mark 'X').

The learned State counsel has opposed the present petition and has submitted that the FIR has been correctly registered.

This Court has heard the learned counsel for the petitioner and the learned State counsel and has perused the paper-book.

From the above-said facts and circumstances, it is apparent that the present FIR was registered in view of the fact that the petitioner was declared as a proclaimed person in the proceeding under Section 138 of the Act of 1881. The impugned complaint under Section 138 of the Act of 1881 itself has been withdrawn.

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 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) 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 IPC shall be an abuse of the process of court. A similar view has been expressed by this Court in “Anil Kumar Versus Jitender Kumar and another, CRM-M-

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5878-2022 decided on 06.04.2022”, “Anil Kumar Versus Jitender Kumar and another, CRM-M-5755-2022 decided on 06.04.2022” and “Varinder Kumar @ Virender Kumar Versus State of Haryana and another, CRM-M-42551-2021 decided on 19.04.2022”.

In the present case the proceedings under Section 138 NI Act have culminated in a settlement with the withdrawal of the complaint under Section 138 NI Act.

In view of the above, the present petition is allowed and the impugned order dated 29.02.2020 (Annexure P-3) passed by the learned Judicial Magistrate, 1st Class, Bhiwani declaring the petitioner a proclaimed person in complaint case No.COMA 2235/2018 dated 23.07.2018 registered under Section 138 of Negotiable Instruments Act read with Section 420 of IPC, FIR No.0048 dated 23.02.2021 registered under Section 174-A IPC at Police Station Bhiwani Civil, District Bhiwani (Annexure P-6) along with all subsequent proceedings arising therefrom are hereby quashed.

29.09.2022

Jitesh

**(JASJIT SINGH BEDI)
JUDGE**

Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No