

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

**CRM-M No.10801 of 2021
Date of Decision: 17.08.2022**

Davinder Kumar ...Petitioner

VS.

State of Haryana ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Ms. Kanika Ahuja, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

N.S.Shekhawat J. (Oral)

The petitioner has filed the instant petition under Section 482 Cr.P.C. with a prayer to quash the FIR No.280 dated 17.02.2020, registered at Police Station, Baldev Nagar, District Ambala (Annexure P-2) along with all other consequential proceedings arising therefrom.

Learned counsel for the petitioner submits that a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act') was filed against the petitioner by the IndusInd Bank Ltd. through its power of attorney in the Court of learned Judicial Magistrate, 1st Class, Kurukshetra. The complainant was examined during the course of preliminary evidence and the process was issued against the petitioner by the learned Court vide order dated 23.12.2014. The petitioner appeared before the learned Court at Kurukshetra and was ordered to be released on bail. However, later on in view of the amendment in the 'Act' regarding the jurisdiction for filing such cases, the complaint was ordered to be transferred from Kurukshetra to District Ambala. The petitioner did not receive any notice from the Court of Ld. Magistrate at Ambala. Since the

Notices had not been sent at the residence of the petitioner, the same

cannot be served on the petitioner. Later on, the process under Sections 82/83 of Cr.P.C. was also not served upon the petitioner and he had no knowledge with regard to the pendency of the complaint at Ambala. Vide order dated 30.07.2018 (Annexure P-1), the Court of Ld. Judicial Magistrate, 1st Class, Ambala declared the petitioner to be the proclaimed person. In compliance of the said order, the FIR in the instant case was registered by the police on 17.02.2020 and the copy of the FIR was attached as Annexure P-3.

Learned counsel further submits that he did not receive any information regarding the pendency of the matter. However, when he came to know about the pendency of the matter, he approached the respondent-Bank and settled the dispute with the Bank. The trial Court recorded the statement of counsel for the complainant-Bank and the complaint was ordered to be withdrawn by the Court of Judicial Magistrate, Ambala on 03.02.2021. Learned counsel further submits that there is no deliberate avoiding to serve/process of the Court on behalf of the petitioner. Even no notice or warrant was ever received at the address of the petitioner. Ld. trial Court had not complied with the mandatory provisions of Sections 82/83 of the Cr.P.C. and the FIR is abuse of the process of law. Ld. Court further submits that he was declared as proclaimed person in the complaint under Section 138 of the Negotiable Instruments Act. However, when the complainant-Bank has already withdrawn the criminal complaint, the continuation of the proceedings in the present FIR, would be an abuse of the process of Court. This Court heard the matter on 08.03.2021 and the contentions of the petitioner were

In compliance of the order passed by this Court, the State of Haryana has also filed a detailed reply. Learned State counsel submits that the Investigating Officer of the case had verified the fact of compromise between the parties. On enquiry, it was revealed that the matter has been compromised between the parties and the complaint filed by the IndusInd Bank Ltd. has already been withdrawn by the Bank. It was clearly mentioned that the petitioner had deposited the balance amount of loan of two wheeler and the Bank had also issued 'No Objection Certificate' of the petitioner.

It has been held in the matter of ***Microqual Techno Limited and others Vs. State of Haryana and another, 2015(32) R.C.R. (Criminal) 790*** as follows:-

“5. In the present case, petitioners are facing criminal proceedings qua commission of offence punishable under Section 174-A I.P.C. It is the case of the petitioners that they had not received the summons qua the criminal complaint under Section 138 of the Act pending against them. The moment petitioners came to know about the same, they have paid the cheque amount in question to the complainant and they have been discharged in the complaint under Section 138 of the Act. During the course of arguments, learned counsel for the petitioners had shown the reports of the Process Server and a perusal of the same leads to the inference that the petitioners had, in fact, not received the summons qua the pendency of criminal complaint under Section 138 of the Act. Since in the main case, petitioners have been ordered to be discharged in view of compromise effected between the parties, continuation of criminal proceedings against the petitioners under Section 174-A I.P.C. would be nothing but an abuse of process of law.”

It has been held by this Court in the matter of ***Nirmal Vs. State of Haryana, CRM-M-18225-2020***, decided on 09.11.2020 as follows:-

“I have heard learned counsel for the parties. The facts of the present case reveal that the impugned FIR (Annexure P-5) was registered under Section 174-A IPC on account of the petitioner having been declared a proclaimed offender. However, subsequent to the passing of the order declaring her as a proclaimed offender, she stands discharged on the basis of compromise in the proceedings under Section 138 of the Negotiable Instruments Act, 1881 wherein the HDFC Bank withdrew it's complaint. In such circumstances, the continuation of the prosecution of the petitioner under Section 174 IPC would be nothing but an abuse of the process of law.”

In view of the submissions made by learned counsel for the parties and the settled law, the present petition is allowed and the FIR No.280 dated 17.02.2020, registered at Police Station, Baldev Nagar, District Ambala (Annexure P-2) along with all other consequential proceedings arising therefrom are ordered to be quashed.

17.08.2022
hemlata

(N.S.SHEKHAWAT)
JUDGE

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