

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

201

**CRM-M-10914-2021 (O&M)
Date of Decision: 11.05.2022**

GURWINDER SINGH

.... Petitioner

Versus

STATE OF HARYANA AND ANR

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Ms. Sumitra, Advocate for
Mr. Vikram Singh, Advocate for the petitioner.

Mr. Ashish Yadav, Addl. A.G., Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

The question that arises for consideration in the instant petition is as to whether an FIR under Section 174-A of the Indian Penal Code, 1860 can be quashed once the substantive complaint wherefrom the proceedings had emanated itself stands settled amongst the parties?

2. The instant petition has been filed under Section 482 of the Code of the Criminal Procedure (hereinafter referred to as 'the Cr.P.C.') raising a challenge to the order dated 10.09.2019 passed by the Judicial Magistrate Ist Class, Safidon, District Jind, whereby the petitioner had been declared as proclaimed person, and seeking quashing of the FIR No.0060 dated 12.03.2020 under Section 174-A of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') registered at Police Station Safidon, District Jind (Annexure P-5) along with all subsequent proceedings arising therefrom.

3. Learned counsel appearing on behalf of the petitioner *inter alia* contends that that a complaint had been filed by the respondent-bank under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of the cheque bearing No.436333 dated 22.12.2015 amounting to Rs.3,90,000/-. After the filing of the complaint, vide order dated 01.3.2016, the petitioner was summoned for 19.04.2016. Counsel contends that no actual service of summons had been effected upon the petitioner and that the service report reflects the service of summons to have been effected through neighbour or a nephew, and that such service is not stipulated to be an effective service upon the petitioner-accused. A proclamation was issued on 31.07.2019 against the petitioner for 14.08.2019 and on the said date, EHC Subhash Chander is alleged to have appeared and got recorded his statement. Thereafter, the matter was adjourned for 10.09.2019 for presence of the petitioner-accused. On 10.09.2019, upon his non-appearance before the Trial Court, the petitioner was declared as 'proclaimed person' and an order was passed to register an FIR against the petitioner under Section 174-A of the IPC.

4. It is further argued by the learned counsel for the petitioner that the just and proper procedure for declaring a person as 'proclaimed person' has not been complied with and as such the proclamation has not been carried out duly as per Section 82 of the Cr.P.C. There was no valid basis with the Trial Court to conform a satisfactory conclusion that the petitioner was absconding or concealing himself due to which the warrant of arrest could not be executed. The summons/ warrant in question had never been issued to the petitioner at his office address and the service is claimed to have been effected through nephew or neighbour. As a matter of fact, the report on the

warrant shows that the same had been received back unexecuted without assigning any reason. It is thus argued that there was no valid basis for the Court to conform a presumption or satisfaction against the petitioner. It is further submitted that during the pendency of the instant petition, the matter has been compromised/resolved by the petitioner with the complainant-respondent bank and that the entire amount in question already stands paid to the respondent-bank. After receipt of the entire due amount, the complaint instituted by the respondent bank has been withdrawn vide order dated 24.12.2020 (Annexure P-6). The counsel appearing for the petitioner thus submits that the continuation of the proceedings would end in futility since the dispute between the parties stands amicably settled and there is no subsisting grievance insofar as the respondent bank is concerned.

5. Mr. Saurabh Bhardwaj, Advocate, appears and files his power of attorney on behalf of the complainant-respondent bank. He admits the fact that the entire amount already stands paid to the satisfaction of the respondent bank-complainant that the respondent-bank has already withdrawn the complaint instituted against the petitioner. He further submits that he has no objection to the proceedings being quashed.

6. Learned State counsel submits that even though the matter might have been compromised between the parties, however, the same does not *ipso-facto* justify the absence of the petitioner and the deliberate non-appearance of the petitioner ought not be condoned. He further raises objection to the leniency being shown to the petitioner. He, however, could not controvert the fact that the matter already stands resolved amicably between the parties and that the proceedings under Section 138 of Negotiable

Instruments Act, 1881 have been held quasi civil in nature by the Hon'ble Supreme Court of India.

7. I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

8. In order to appreciate the prayer, it would be essential to refer to certain precedent judgments dealing with the similar issue. A coordinate Bench of this Court in the matter of **Ashok Madan Vs. State of Haryana & Another**, passed in CRM-M-51783 of 2018 decided on 28.05.2019 held as under:-

6. No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174-A IPC 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 petitioners, the default stood condoned. In such circumstances, continuation of proceedings under Section 174-A IPC shall be abuse of the process of court.

9. Furthermore, in the matter of **Prem Bansal Vs. State of Haryana & Another** passed in CRM-M-7354 of 2022 decided on 22.02.2022, a co-ordinate Bench of this Court held as under:-

'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 petitioners 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 of the IPC in view of the order passed in proceedings under Section 138 of the Act of 1881, while declaring the petitioners therein as proclaimed offender in the said proceedings, 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 petitioners 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 petitioners, 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.”

10. A perusal of the judgment would show that where the substantive proceedings, wherein the order declaring the petitioner-accused as proclaimed person was passed, have already been amicably resolved amongst the parties, resulting in withdrawal of the complaint or the quashing of the proceedings, the FIR registered under Section 174-A of the IPC, as a result of certain interim order passed in criminal proceedings, has also been quashed. The object of the said Section is to secure presence of an accused and to establish rule of law so that the proceedings in the main case could be finalized. Once the parent dispute stands amicably resolved, the proceedings initiated as a result of intermediary orders would not sub-serve any interest of justice. The proceedings under Section 138 of the Negotiable Instruments Act, 1881 being quasi-criminal, the object is to resolve the dispute and when such object is served, the Court should adopt a liberal approach towards the accused who have already redressed the grievance of the complainant.

11. Without going into the controversy at this stage, as to whether the service was correctly and properly effected upon the petitioner in the instant case or not, and after noticing that the main case already stands settled and the complaint having been withdrawn, the registration of the instant FIR, that is only an outcome of the proceedings held in the said compliant, would not serve any purpose by keeping the present FIR and other proceedings alive.

12. After going through the merits of impugned order and taking into consideration the fact that the main matter already stands resolved and the complaint instituted by the respondent bank for dishonour of the cheque and for seeking the payment in question already stands settled, no purpose would be served by continuation of the present proceedings.

13. The instant petition is accordingly allowed and FIR No.0060 dated 12.03.2020 under Section 174-A of the Indian Penal Code, 1860 registered at Police Station Safidon, District Jind (Annexure P-5) along with all subsequent proceedings arising therefrom are **quashed** qua the petitioner and the order date 10.09.2019 passed by the Judicial Magistrate 1st Class, Safidon, vide which the petitioner had been declared as proclaimed person is **set aside**.

Petition is allowed, accordingly.

(VINOD S. BHARDWAJ)
JUDGE

May 11, 2022
rajender

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>