

110-A

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

CRM-M-10524-2021 (O&M)

Date of decision : 17.02.2022

Deepak

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Kamal Chaudhary, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.691 dated 19.11.2019 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Ballabgarh City, District Faridabad (Annexure P-5) and all the consequential proceedings arising therefrom.

On 05.03.2021, a Coordinate Bench of this Court was pleased to pass the following order:-

“Case is taken up for hearing through video conferencing.

This petition is for quashing of FIR No. 691 dated 19.11.2019 registered under Section 174-A IPC, at Police Station Ballabgarh City, District Faridabad, along with

all the consequential proceedings arising therefrom.

Learned counsel for the petitioner submits that a complaint under Section 138 of the Negotiable Instruments Act, 1881, was filed by complainant-respondent No. 2, as a cheque amounting Rs. 66,250/- was dishonoured. Thereafter, the petitioner settled the matter with the respondent Bank and after the settlement and assurance given by the Bank, he did not put in appearance before the concerned Court in the complaint case. Despite the settlement and assurance, the respondent-Bank kept on pursuing the case and because of non-appearance, the petitioner was declared as a proclaimed person vide order dated 15.11.2019 and FIR No. 691 dated 19.11.2019 under Section 174-A was got registered against him.

Learned counsel for the petitioner further submits that now the complaint has been withdrawn by the respondent-Bank and full and final payment had already been made by the petitioner.

Notice of motion for 05.04.2021.

In the meantime, no coercive action shall be taken against the petitioner.

Sd/-(HARNARESH SINGH GILL)

05.03.2021

JUDGE ”

Learned counsel for the petitioner has reiterated the above-mentioned facts and has referred to the order dated 18.12.2019 (Annexure P-6) vide which the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”), had been withdrawn. Further reference has been made to an affidavit of Vineet Singh (Annexure R-1), authorized representative of respondent No.2-Bank. As per the said affidavit, it has been stated that

Bank/respondent No.2 has no objection, in case, the present FIR is quashed against the petitioner.

Learned State Counsel has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and has stated that order dated 15.11.2019 (Annexure P-4), vide which the petitioner has been declared as proclaimed offender has rightly been passed.

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.

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.

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 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 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.

In the present case, it is not in dispute that respondent No.2 had filed complaint under Section 138 of the Act of 1881 for dishonour of cheque dated 15.01.2013 amounting to Rs.66,250/- and it is in the said proceedings that the order dated 15.11.2019 (Annexure P-4) was passed vide which the petitioner was declared as proclaimed offender and direction was given to SHO concerned to register an FIR and in pursuance of the said order, the present FIR No.691 dated 19.11.2019

(Annexure P-5) was registered under Section 174-A of the IPC. On 18.12.2019, the matter was compromised and complainant/respondent No.2 had withdrawn the complaint under Section 138 of the Act of 1881. Order dated 18.12.2019 is reproduced hereinbelow:-

“Present:- Sh. Narender Jangra, Counsel for complainant.

Today case file put up on application of applicant/complainant. It be checked and registered at its original position. Learned counsel for complainant suffered a separate statement that he withdraws the present complaint on the instructions of the complainant bank. Statement recorded.

Heard. In view of the statements made by learned counsel for the complainant present complaint is dismissed as withdrawn. On request surety details if any be deleted from the CIS module as per law governing the same. File be consigned to the records after due compliance.

*Sd/- (Amit Sihag)
Judicial Magistrate Ist Class,
Date of Order: 18.12.2019 UID No.HR0371”*

An affidavit was also filed by respondent No.2, which has been annexed as Annexure R-1 with this petition, wherein in para 4 of the same, it has been stated that respondent No.2-Bank has no objection, in case, the present FIR is quashed against the petitioner because the Bank has received the cheque amount and consequently, the complaint has been withdrawn. Since, the proceedings under Section 138 of the Act of 1881 have been withdrawn and the present FIR has been registered on account of non-appearance of the petitioner, this Court feels that

continuance of the proceedings in the present FIR would be an abuse of process of the Court.

Keeping in view the abovesaid facts and circumstances, as well as the authorities of law referred to above, the present petition is allowed and FIR No.691 dated 19.11.2019 registered under Section 174-A of the IPC at Police Station Ballabgarh City, District Faridabad (Annexure P-5) and all the consequential proceedings arising therefrom, are ordered to be quashed qua the petitioner.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

17.02.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No