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

CRM-M-11261-2022

Date of decision : 16.03.2022

Sandeep Kumar

...Petitioner

Versus

State of Haryana

...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.1148 dated 28.11.2018 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 as well as impugned order dated 12.07.2018 (Annexure P-6) whereby the petitioner has been declared as proclaimed person and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, a complaint under Section 25 of the Payment and Settlement Systems Act, 2007 (as amended upto date) read with Section 357 of Cr.P.C. (hereinafter to be referred as “the complaint”) was filed by Indiabulls

Housing Finance Limited-complainant, with respect to dishonour of transaction amount of Rs.22,849/- and it is further submitted that the petitioner was never duly served in the said proceedings and vide order dated 12.07.2018 (Annexure P-6), the petitioner was illegally declared as Proclaimed Person and direction was given to the Police Station concerned to proceed against the petitioner under Section 174-A of the IPC and accordingly, impugned FIR was registered under Section 174-A of the IPC. It is argued that proceedings in the complaint have been compromised and the said complaint has been withdrawn vide order dated 09.03.2021 (Annexure P-8). It is further argued that the petitioner has also been granted the concession of anticipatory bail vide order dated 12.03.2021 (Annexure P-9) passed by the Sessions Judge, Gurugram, in FIR registered under Section 174-A of the IPC and while granting bail, the Court had considered that proclamation was not in accordance with law. It is contended that in the said circumstances, keeping the impugned FIR under Section 174-A of the IPC alive would be an abuse of process of law.

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 the FIR has been registered on account of direction given in the order dated 12.07.2018 (Annexure P-6) and is in accordance with law.

This Court has heard the learned counsel for the parties and has perused the paper book.

Indiabulls Housing Finance Limited had filed complaint against the present petitioner on dishonour of transaction amount of Rs.22,849/-. It is the case of the petitioner that he was never duly served in the said proceedings and the order dated 12.07.2018 (Annexure P-6) was passed declaring the petitioner as proclaimed person and direction was given to the Police Station concerned to register an FIR under Section 174-A of the IPC and in pursuance of the said direction, impugned FIR has been registered.

A perusal of order dated 09.03.2021 (Annexure P-8) would show that the complainant has withdrawn the said complaint on the ground that the matter has been settled. The said order dated 09.03.2021 is reproduced hereinbelow:-

“Indiabulls Vs. Sandeep Kumar

1323/17

Present: Sh. Arun Kumar, AR for complainant company.

File put up as an application moved on behalf of complainant for summoning of the file from record room as well as for withdrawal of the case on the ground that matter has been settled though the file is consigned to record room as accused was declared P.O. Let, file be called from the record room after lunch break.

(Chavi Goel)

JMFC/Gurugram

(UID HR0377)

Date of Order 09.03.2021

Present:- Shri Arun Kumar, AR for complainant company.

Main file received from record room. It be restored to its original number. AR for complainant has made a statement that he does not want to proceed further with the present complaint on the instructions of complainant and same may

kindly be dismissed as withdrawn. His statement in this regard recorded separately. Heard. There are sufficient grounds to permit the complainant/ AR for complainant, complainant counsel to withdraw this complaint against the accused.

Accordingly, present complaint is hereby dismissed as withdrawn. In view of Section 257 Cr. P. C., the accused is hereby acquitted in this case. The bail bonds and surety bonds if any stand discharged. The unexhibited original documents if any be returned to the concerned parties against proper receipt and identification, if desired. File be consigned to record room after due compliance.

Announced in open court.

09.03.2021

(Chavi Goel)

Judicial Magistrate 1st Class

Presiding Officer as Daily Lok Adalat

Gurugram/UID No. HR-0377”

It is also apparent from the record that the petitioner had sought anticipatory bail in FIR registered under Section 174-A of the IPC and has been granted the same vide order dated 12.03.2021 (Annexure P-9) and in para 5 of the said order, it has been observed that the proclamation has not been issued in accordance with law inasmuch as proclamation dated 17.04.2018 for 09.05.2018 cannot be stated to be a valid proclamation and on the said basis, the petitioner was granted anticipatory bail.

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 NI 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 NI Act 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 an abuse of the process of court.

In the present case, as apparent from the abovesaid fact, the

matter has been compromised and the complaint has already been withdrawn and also the petitioner appeared in the proceedings under Section 174-A of the IPC and thus, keeping in view the abovesaid facts and circumstances, as well as the law laid down in the abovesaid judgments, the present petition is allowed and FIR No.1148 dated 28.11.2018 registered under Section 174-A of the IPC at Police Station Shivaji Nagar, District Gurugram as well as impugned order dated 12.07.2018 (Annexure P-6) whereby the petitioner has been declared as proclaimed person and all the subsequent proceedings arising therefrom are quashed.

16.03.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**