

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(201)

CRM-M-12534-2022

Date of decision: - 24.08.2022

Krishan Kumar

....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sumit Sangwan, Advocate,
for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition under Section 482 of Cr.P.C. for quashing of FIR No.60 dated 03.03.2022 registered under Section 174-A of IPC (Annexure P-2), at Police Station Dadri City, District Charkhi Dadri as well as order dated 15.12.2021 (Annexure P-1), passed by the Judicial Magistrate 1st Class, Charkhi Dadri, vide which the petitioner has been declared as proclaimed person in the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act').

Learned counsel for the petitioner has submitted that in the present case, the Bhiwani District Primary Coop. Agri. & Rural Development Bank Limited, had filed a complaint against the present petitioner and Madan under Section 138 of the NI Act and in the said case, the petitioner was never served and was illegally declared as

proclaimed person, vide order dated 15.12.2021 passed by the Judicial Magistrate 1st Class, Charkhi Dadri and in the said order, it was directed that the concerned SHO was to take necessary action and on the basis of the said order, the FIR under Section 174-A IPC has been registered against the present petitioner and co-accused Madan. It is also submitted that the matter had been compromised and the entire amount of cheque was paid to the complainant and thereafter, the complaint under Section 138 of the NI Act has been withdrawn, vide order dated 04.03.2022 (Annexure P-3). It is also submitted that since the complaint under Section 138 of the NI Act, has been withdrawn, thus, the present FIR and impugned order deserve to be quashed/set aside.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that the FIR has been registered in pursuance of the order passed by the Judicial Magistrate 1st Class, Charkhi Dadri and there is no ground to quash the same.

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

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 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 considerations 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, the complaint under Section 138 of the NI Act has been withdrawn, as apparent from the order dated 04.03.2022 (Annexure P-3), in which, the statement of counsel for the complainant has been recorded to the effect that the entire amount of cheque has been received and the complaint is dismissed as withdrawn. The FIR in question was registered on account of the petitioner having been declared as proclaimed person in the proceedings under Section 138 of the NI Act, vide order dated 15.12.2021 and in the said order the Judicial Magistrate 1st Class, Charkhi Dadri had directed to the concerned SHO to take necessary action and thus, the said FIR has been registered under Section 174-A IPC.

Once the proceedings under Section 138 NI Act have been withdrawn, thus, in view of the above-said settled law, the impugned FIR and impugned order deserve to be quashed/set aside.

Respondent No.2 has not been served in the present case.

This Court is of the view that service upon respondent No.2 is not necessary, inasmuch as, respondent No.2 is not the complainant in the FIR registered under Section 174-A IPC and even in the proceedings under the NI Act, a perusal of the order dated 04.03.2022, it is apparent that the matter has been compromised and complaint under Section 138 NI Act has been withdrawn. The said fact has also been verified by the counsel for the State, thus, effecting service upon respondent No.2 would only further delay the matter and would also require the respondent No.2 to entail expenses to appear in the present case.

Keeping in view the facts and circumstances as well as the authorities of law referred to above, the present petition is allowed and FIR No.60 dated 03.03.2022 under Section 174-A of IPC (Annexure P-2), registered at Police Station Dadri City, District Charkhi Dadri and all subsequent proceedings arising therefrom are quashed and even the order dated 15.12.2021 (Annexure P-1) passed by the Judicial Magistrate 1st Class, Charkhi Dadri, whereby, the petitioner has been declared as a proclaimed person is also set aside.

August 24, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
No