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

CRM-M-16641-2022 (O&M)

Date of decision : 22.04.2022

Chetan Malhotra

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rajesh Malik, Advocate for
Mr. Sandeep Singh, 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.580 dated 07.09.2021 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.

Learned counsel for the petitioner has submitted that in the present case, M/s NKC Projects Private Limited had filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) against three accused persons including the present petitioner. It is further submitted that in the said case, the petitioner was declared as proclaimed person vide order dated 27.04.2013 (Annexure P-2) and the Judicial Magistrate Ist Class, Gurgaon

had directed the police to initiate proceedings under Section 174-A of the IPC against the petitioner. It is contended that in the said matter, the compromise was effected and the entire money due was paid to the complainant and accordingly, vide order dated 27.05.2015 (Annexure P-4), the complainant withdrew the complaint filed under Section 138 of the Act of 1881. It is further contended that after a period of six years, the present FIR under Section 174-A of the IPC has been registered in order to implement the abovesaid order dated 27.04.2013. It is argued that the petitioner had moved an application before the Judicial Magistrate Ist Class, Gurgaon for cancellation of the proceedings but the Judicial Magistrate Ist Class, Gurgaon, after considering that the matter has been compromised had observed that the Judicial Magistrate Ist Class, could not quash the FIR and accordingly, the present petition has been filed.

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 rightly registered in pursuance of order dated 27.04.2013 (Annexure P-2).

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.

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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 the Act of 1881, 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 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 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.

The facts of the present case would show that law laid down in the abovesaid two cases fully apply in the present case. One M/s NKC Projects Private Limited had instituted a complaint under Section 138 of the Act of 1881 against three accused persons including the present petitioner. The compromise was effected in the said proceedings and the money was returned to the complainant and accordingly, the complaint filed under Section 138 of the Act of 1881 was withdrawn vide order dated 27.05.2015 (Annexure P-4). Order dated 27.05.2015 reads as under:-

“NKC Projects Pvt. Ltd. Vs Campus EAI (India) Pvt Ltd.

Present:- AR on behalf of complainant represented by Sh. Gogesh Kumar Singh, Adv.

File summoned from record room on an application filed by complainant withdrawing the complaint. Complainant has given a separate statement that the matter has been compromised and he has received full and final payment from accused. He does not want to proceed with the complaint and same may be dismissed as withdrawn. Keeping in view statement of complainant this case is dismissed as withdrawn. The proceedings against accused are hereby dropped. File consigned to record-room after due compliance.

Announced in daily Lok Adalat

Sd/- (Kunal Garg)

Judicial Magistrate 1st Class Gurgaon

27.5.2015”

After a period of six years, the present FIR has been registered in pursuance of order dated 27.04.2013 which was passed in the

proceedings under Section 138 of the Act of 1881, vide which, the present petitioner was declared as proclaimed offender and direction was given to the concerned Police Station to initiate proceedings against the accused/petitioner under Section 174-A of the IPC. The petitioner had moved an application before the Judicial Magistrate Ist Class, Gurgaon for cancellation of the proceedings but the Judicial Magistrate Ist Class, Gurgaon had observed that since the main case itself has been withdrawn, thus, no further direction can be issued and the petitioner would be at liberty to seek legal remedy, in accordance with law. It is admitted case that the present FIR has been registered in pursuance of order dated 27.04.2013, vide which, the petitioner has been declared as proclaimed person in proceedings under Section 138 of the Act of 1881. Once, the proceedings under Section 138 of the Act of 1881 and complaint have been withdrawn, thus, keeping the present FIR under Section 174-A of the IPC alive would be an abuse of process of law.

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.580 dated 07.09.2021 registered under Section 174-A of the IPC at Police Station Shivaji Nagar, District Gurugram and all the subsequent proceedings arising therefrom are quashed/set aside.

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

22.04.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Whether reportable:-****Yes/No****Yes/No**