

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

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CRM-M-20832-2021(O&M)

Date of decision: 15.03.2022

SHER SINGH RANA

....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

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

Present : Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

2. 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 stand settled amongst the parties?

3. The instant petition has been filed under Section 482 CrPC for seeking quashing of the order dated 24.07.2017 (Annexure P-3) passed by the Judicial Magistrate 1st Class, Ambala, declaring the petitioner a proclaimed person and of the consequential registration of FIR No.122 dated 16.02.2020 registered under Section 174-A IPC at Police Station Mahesh Nagar, District Ambala (Annexure P4) along with all proceedings arising therefrom.

4. A brief reference to the facts as claimed are that respondent-Ashok Kumar had filed a complaint under Section 138/141 of the Negotiable Instruments Act alleging therein that the petitioner had approached the complainant in June 2016 and induced him to extend a friendly loan of Rs.10 lakhs for a period of two

months. A pro-note was duly executed by the petitioner and a post dated cheque bearing No.347069 dated 07.09.2016 amounting to Rs.10 lakhs drawn on State Bank of India, Branch at Mahatma Gandhi Marg, Ambala Cantt was issued in favour of the respondent No.2 to discharge his liability and legally enforceable debt. However, upon presentation of the same, it was dishonored. The same resulted in institution of the complaint under Section 138 of the Negotiable Instruments Act. It is pointed out that despite issuance of summons and warrants, service upon the petitioner could not be affected and eventually vide order dated 24.07.2017 (Annexure-P3), the petitioner was declared as proclaimed person. A further direction was issued to intimate the concerned SHO to register the FIR under Section 174-A IPC. Consequently, case FIR No.122 dated 16.02.2020 was registered against the petitioner.

5. Learned counsel appearing on behalf of the petitioner has submitted that the issuance of the proclamation was bad and that no actual service had been affected upon him. He further submitted that procedure contemplated under Section 82 CrPC had not been followed, hence the consequent proclamation of the petitioner was improper. The petitioner contends that he is employed in the Army and was posted as Regiment Havildar Major. He was discharging his duty with the Western Command during the said period and thereafter remained posted in the Eastern Command. The list of assigned duties has been appended by the petitioner as Annexure P-5. It is, thus, contended that non-appearance of the petitioner was not on account of any deliberate attempt to avoid appearance before the Court, rather, proper service was never affected upon the petitioner. Learned counsel further contends that failure to effect service upon the petitioner apart, the parties have also resolved their dispute and now there is no amount due against the petitioner. In support thereof, he has made reference to the order dated 07.09.2020

passed by Judicial Magistrate 1st Class, Ambala, as per which the complainant got recorded his statement to the effect that compromise between the parties had been affected and had withdrawn the complaint filed by him in acknowledgment of the same. The order dated 07.09.2020 passed by Judicial Magistrate First Class Ambala is extracted as under:-

Ashok Kumar Anad Vs. Sher Singh Rana

Present: Sh. Pawan Kumar Goel, counsel for the complainant.

An application for withdrawing the complaint, has been moved by the ld. Counsel for the complainant. Main file be summoned. Ahlmad is directed to put up the the main file after some time.

(Anit Rani)

JMIC / Ambala

Present: Sh. Pawan Kumar Goel, counsel for the complainant.

After some time, main file received. It be restored on its original number. Ld. Counsel for the complainant got recorded his statement that compromise has been effected between the parties and thus, he do not want to pursue with the present complaint and thus, he want to withdraw the case. Keeping in view of this statement, the ld. Counsel for the complainant is permitted to withdraw the case and the present complaint is dismissed as withdrawn. Accused is hereby discharged. After doing need-ful, file be consigned to the record room.

(Anit Rani)

*Judicial Magistrate Ist Class,
Ambala*

Pronounced:07.09.2020

6. Learned counsel for the petitioner further contends that the complaint, which was the cause of registration of the instant FIR, has already been settled between the parties and it would not advance any interest of justice to continue incarceration of the petitioner in the instant FIR, which arose due to failure of the

petitioner to appear in the proceedings in the said complaint.

7. Learned State counsel raises no serious objection to the arguments raised by the petitioner. There is no denial or dispute regarding the statement made by the parties and the final order passed in the complaint.

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

9. In order to appreciate the prayer, it would be essential to refer to certain precedent judgements dealing with the similar issue. A co-ordinate 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 petitioner, the default stood condoned. In such circumstances, continuation of proceeding sunder Section 174-A IPC shall be abuse of the process of court.

10. Further 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.

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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 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 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.”

11. A perusal of the same would show that where the substantive proceedings, wherein the order declaring the accused-petitioner 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 IPC, as a result of certain interim order passed in criminal proceedings, have also been quashed. The object being to secure presence of an accused and to establish rule of law so that the proceedings 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 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 has already redressed the grievance of the complainant.

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

13. The instant petition is accordingly allowed and FIR No.122 dated 16.02.2020 registered under Section 174-A IPC at Police Station Mahesh Nagar, District Ambala (Annexure P4) along with all subsequent proceedings arising therefrom are **quashed** and the order dated 24.07.2017 (Annexure P-3) passed by the Judicial Magistrate 1st Class, Ambala, vide which the petitioner has been declared as proclaimed person is **set aside**. However, the same would be subject to payment of costs of Rs.10,000/- to be deposited by the petitioner with the 'Poor Patients Welfare Fund' of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh, within one month from receipt of certified copy of this order.

(VINOD S. BHARDWAJ)
JUDGE

March 15, 2022

S.Sharma(syr)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No