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

CRM-M-14623-2021 (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.969 dated 04.11.2018 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-3) and all the consequential proceedings arising therefrom.

On 06.04.2021, a Coordinate Bench of this Court was pleased to pass the following order:-

“This petition under Section 482 Cr.P.C. has been moved by petitioner for quashing of FIR No.969 dated 04.11.2018 under Section 174- A IPC, registered at Police Station Ballabgarh City, District Faridabad, with all consequential proceedings arising therefrom.

Learned counsel for the petitioner inter alia contends

that complaint bearing NACT No.4251 of 2017 under Section 138 of Negotiable Instruments Act, 1881, was instituted by complainant-respondent No.2- bank, as a cheque amounting to Rs.4,50,000/- was dishonoured. He further submits that though petitioner used to appear before the Court but on account of default, proceedings under Section 82 Cr.P.C. were initiated against him and vide order dated 30.10.2018 (Annexure P/2), petitioner was declared proclaimed person and in pursuant to said order, FIR No.969 dated 04.11.2018 under Section 174-A IPC, was registered against him at Police Station Ballabgarh City, District Faridabad. He further submits that after registration of FIR, matter has already been compromised between petitioner and respondent No.2-complainant-bank as the cheque amount has already been received by respondent No.2-complainant-bank from the petitioner and thereafter in terms of statement of authorized representative of respondent No.2-complainant-bank, vide order dated 08.12.2018 (Annexure P/4), complaint bearing NACT No.4251 of 2017 has already been dismissed as withdrawn.

Notice of motion for 26.04.2021.

Meanwhile, no coercive steps shall be taken against the petitioner qua FIR No.969 dated 04.11.2018 under Section 174-A IPC, registered at Police Station Ballabgarh City, District Faridabad.

List along with CRM-M-10524-2021.

06.04.2021

*Sd/- (LALIT BATRA)
JUDGE”*

Learned counsel for the petitioner has reiterated the above-mentioned facts and has referred to the order dated 08.12.2018 (Annexure P-4) vide which the complaint filed under Section 138 read with Section 142 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, authorized representative of respondent No.2-Bank, which has been annexed as Annexure R-1. 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 30.10.2018 (Annexure P-2), 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.

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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.

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 03.02.2016 amounting to Rs.4,50,000/- and it is in the said proceedings that the order dated 30.10.2018 (Annexure P-2) 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.969 dated 04.11.2018 (Annexure P-3) was registered under Section 174-A of the IPC. On 08.12.2018, the matter was compromised and complainant/respondent No.2 had withdrawn the

complaint under Section 138 of the Act of 1881. Order dated 08.12.2018 is reproduced hereinbelow:-

“File taken up today. At this stage A.R. of complainant suffered a separate statement that cheque amount received from the accused. Therefore, he does not want to pursue further with the present complaint and intends to withdraw the same. Statement recorded. If in this case, during trial bail bonds are furnished by accused, same stands discharged.

Heard. In view of the statement made by the A.R. of complainant, present complaint is dismissed as withdrawn. File be consigned to record room after due compliance.

*Sd/- (Amit Sihag)
JMIC-CUM-Presiding Officer,
National Lok Adalat
UID No.HR0371
Date of Order: 08.12.2018”*

An affidavit was also filed by respondent No.2, which has been annexed as Annexure R-1, 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 has 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.969 dated 04.11.2018 registered under Section 174-A of IPC at

Police Station Ballabgarh City, District Faridabad (Annexure P-3) 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