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

CRM-M-14106-2022

Date of decision : 04.04.2022

Satya Sunder Panigrahi

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Samar Ahluwalia, Advocate for
Mr. Akshay Jindal, 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.19 dated 04.01.2022 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, Vaibhav Dhingra had filed a complaint under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) on 08.04.2015 with respect to dishonour of cheque amounting to Rs.15,00,000/-. It is further submitted that on 22.11.2021, the petitioner was declared as Proclaimed Person on account of his non-appearance before the trial Court and the concerned Police Station

was directed to initiate the proceedings against him under Section 174 of the IPC and in pursuance of the said order passed, the present FIR i.e. FIR No.19 dated 04.01.2022 was registered under Section 174-A of the IPC against the petitioner. It is contended that the matter has been compromised in the proceedings under Section 138 of the Act of 1881 and the complaint under Section 138 of the Act of 1881 has been withdrawn. For the said purpose, learned counsel for the petitioner has referred to order dated 09.03.2022 (Annexure P-6). It is contended that once complaint under Section 138 of the Act of 1881 has been compromised and withdrawn, no useful purpose would be served in keeping the present FIR under Section 174-A of the IPC alive.

Learned counsel for the petitioner has also submitted that there is one more FIR which was registered on 19.03.2020 under Section 174-A of the IPC against the petitioner which was also on account of his non-appearance during the proceedings under Section 138 of the Act of 1881 and the petitioner is in the process of filing separate petition for quashing of the said FIR also.

Notice of motion to respondent No.1 only.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State/respondent No.1 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 in question has been rightly registered as the petitioner had not appeared in the proceedings under Section 138 of the Act of 1881 and was declared proclaimed person and the said FIR has been registered on account of

directions given by the Judicial Magistrate Ist Class, Gurugram.

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

A complaint under Sections 138/141/142 of the Act of 1881 was filed by Vaibhav Dhingra against the present petitioner for dishonour of cheque amounting to Rs.15,00,000/-. On 22.11.2021, the petitioner was declared as Proclaimed Person and the Judicial Magistrate Ist Class, Gurugram, had directed the concerned Police Station to initiate the proceedings against the petitioner under Section 174-A of the IPC and in pursuance of the said direction, the present FIR has been registered under Section 174-A of the IPC against the petitioner. A perusal of order dated 09.03.2022 (Annexure P-6) would show that complaint filed under Section 138 of the Act of 1881 has been withdrawn and thus, proceedings under Section 138 of the Act of 1881 have attained finality. The order dated 09.03.2022 is reproduced hereinbelow:-

“Vaibhav Dingra Vs. Shri Satya Sunder

Present: AR for the complainant in person with Learned Counsel Sh. M.K. Dang.

File put up an application for withdraw has been filed by learned counsel for complainant.

Let the main file be summoned from the record room.

Sd/-(Amitendra Singh)

JMIC/Gurugram

(UID No.-HR0512) 09.03.2022

Present: AR for the complainant in person with Learned Counsel Sh. M.K. Dang.

Main file put up before me from the record room.

AR for complainant got his statement recorded

separately to the effect that he does not want to proceed further with the present complaint and same may be dismissed as withdrawn.

Heard. In view of aforesaid statement, present complaint is hereby dismissed as withdrawn. File be consigned to record room after due compliance.

COMPLAINT: DISMISSED AS WITHDRAWN

Announced in open court.

09.03.2022

Sd/-(Amitendra Singh)

Judicial Magistrate First Class

Presiding Officer as Daily Lok Adalat

Gurugram. (UID No.-HR0512)”

It is the case of the petitioner that the matter has been compromised and, therefore, the said complaint under Section 138 of the Act of 1881 has been withdrawn.

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 (CrI.) 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.

In the present case, the complaint under Section 138 of the Act of 1881 has been withdrawn. Once the impugned order has been withdrawn, then the continuance of the proceedings in the FIR under Section 174-A of the IPC would be an abuse of process of Court.

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.19 dated 04.01.2022 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.

In this case, notice has not been issued to respondent No.2 inasmuch as respondent No.2 is not the complainant in the present FIR registered under Section 174-A of the IPC and had only filed complaint under Section 138 of the Act of 1881 which already stands compromised and withdrawn as is apparent from order dated 09.03.2022 (Annexure P-6), thus, the said respondent No.2 would not be contesting party in the present case. Moreover, no order prejudicial to the rights of respondent No.2 has been passed by this Court and issuance of notice to him would only further delay the matter and would also cause financial burden to respondent No.2 whereas respondent No.2 has already withdrawn his complaint under Section 138 of the Act of 1881 and thus, the present petition is disposed of without issuance of notice to him.

04.04.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**