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

CRM-M-16378-2022

Date of decision : 25.04.2022

Kale Di Hatti and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rajesh Gupta, Advocate for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is second petition filed under Section 482 of Cr.P.C. for quashing of FIR No.12 dated 14.01.2021 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Uklana, District Hisar and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, the complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) was filed against the present petitioners by Marvel Limited in the competent Court of law at Hisar. It is further submitted that the petitioners were not aware of the complaint filed as petitioner No.2 who is also proprietor of petitioner No.1-

firm was residing in Australia since 19.10.2016 whereas the complaint had been instituted on 17.10.2016 and vide order dated 29.05.2018, the petitioners were declared as proclaimed person and intimation regarding the same was sent to the SHO concerned. It is contended that the moment the petitioners learnt about the said proceedings, the petitioners compromised the matter with the complainant and a settlement had taken place and the complaint was withdrawn by the complainant vide order dated 21.10.2020 (Annexure P-4). It is further contended that after a delay of more than 2 months from the date of withdrawal of the said complaint and after a period of almost more than 2 ½ years from the date of passing of the order dated 29.05.2018, the present FIR dated 14.01.2021 was registered under Section 174-A of the IPC solely on account of passing of order dated 29.05.2018. It is further argued that the petitioners had earlier filed petition for quashing of FIR in question which was withdrawn on 29.10.2021 on account of there being certain discrepancies in the petition and liberty was granted to the petitioners to file fresh petition with better particulars and accordingly, the present petition was filed. It is further stated that once complaint under Section 138 of the Act of 1881 has been compromised and withdrawn, then keeping the proceedings under Section 174-A of the IPC alive would be an abuse of process of law.

Notice of motion.

On advance notice, Mr. Munish Sharma, 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 FIR has been registered in pursuance

of order dated 29.05.2018 passed by the Court and thus, the present petition deserves to be dismissed.

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.

In the present case, one complaint under Section 138 of the Act of 1881 was filed by Marvel Limited in the competent Court of law at Hisar. The said complaint was stated to be instituted on 17.10.2016 whereas petitioner No.2 who is sole proprietor of petitioner No.1 was stated to be residing in Australia since 19.10.2016. Vide order dated 29.05.2018, the present petitioners were declared as proclaimed person and it was directed that the concerned SHO would take action under Section 174-A of the IPC. It is submitted that it is case of the petitioners that the moment the petitioners learnt about the said proceedings, the compromise was effected with the complainant in the proceedings under Section 138 of the Act of 1881 and on the said basis, the complaint under Section 138 of the Act of 1881 was withdrawn. The said fact is apparent from order dated 21.10.2020 (Annexure P-4), the relevant portion of the same is reproduced hereasunder:-

“Present: Sh. Rajesh Jain, Advocate for the complainant.

An application for summoning the file and to

withdraw the complaint is moved on behalf of the complainant.

Original file summoned and received from the record room. It be restored to its original number.

Learned counsel for the complainant has made a statement that compromise has been effected with the accused and as per instructions of the complainant, he does not want to proceed further with the present complaint and same be dismissed as withdrawn.

In view of the statement made by the complainant's counsel, present complaint is hereby dismissed as withdrawn. File be consigned to record room, after due compliance.

Sd/-(Jitender Kumar)

JMIC, Exclusive Court N.I.Act.

Hisar/ 21.10.2020

UID No.HR0465”

A perusal of the said order would show that it has been stated by the complainant that the matter has been compromised and thus, the complainant does not wish to proceed with the complaint and same was thus, dismissed as withdrawn. Even statement of the complainant to the said effect was recorded, which appears at page 13 of the paper book. The present FIR has been registered after the proceedings under Section 138 of the Act of 1881 had been withdrawn and after a period of more than 2½ years from the date of passing of order dated 29.05.2018. 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 and the law, as laid down in the abovesaid cited judgments, would apply to the present case on all force.

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.12 dated 14.01.2021 registered under Section 174-A of the IPC at Police Station Uklana, District Hisar 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.

25.04.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No