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

CRM-M-20500-2022

Date of decision : 12.05.2022

Smriti

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Manoj Pundir, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of order dated 04.10.2021 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Hisar in Criminal Complaint No.NACT-1242-2020 dated 04.06.2020 titled as Archna Soni Vs. M/s Success Graph & other under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) as well as quashing of FIR No.574 dated 11.10.2021 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Hisar City, District Hisar, Haryana as the main complaint has already been withdrawn by respondent No.2.

Learned counsel for the petitioner has submitted that in the

present case, a complaint under Sections 138/141 of the Act of 1881 was filed by Archana Soni against the present petitioner with respect to dishonour of three cheques amounting to Rs.45,000/- each and has further submitted that the petitioner was illegally declared proclaimed person in the proceedings of the said case vide order dated 04.10.2021 (Annexure P-7) on account of her non-appearance. It is argued that Judicial Magistrate Ist Class, Hisar, vide order dated 04.10.2021 had directed the SHO concerned to register an FIR under Section 174-A of the IPC and accordingly, the impugned FIR has been registered under 174-A of the IPC. It is further argued that now the matter has been compromised and the complainant-Archana Soni had withdrawn complaint filed under Sections 138/141 of the Act of 1881 vide order dated 21.12.2021 (Annexure P-10).

Notice of motion to respondent No.1 only.

On advance notice, Mr. Munish Sharma, 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 has been registered in accordance with law inasmuch as the petitioner was declared as proclaimed person vide order dated 04.10.2021 and the Judicial Magistrate Ist Class, Hisar had directed the SHO concerned to register an FIR.

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.

It is not in dispute that in the present case, complaint under Sections 138/141 of the Act of 1881 was filed by Archana Soni-respondent No.2 with respect to dishonour of three cheques amounting to Rs.45,000/- each and it is in the said proceedings that the petitioner was declared as proclaimed person vide order dated 04.10.2021 and vide the same order, the Judicial Magistrate Ist Class, Hisar, had directed the SHO concerned to register an FIR under Section 174-A of the IPC, on account of which the impugned FIR was registered.

A perusal of the order dated 21.12.2021 (Annexure P-10) would show that the said complainant, in the proceedings under Sections 138/141 of the Act of 1881, has withdrawn the said complaint on account of the compromise effected between the parties. It has been held in the abovesaid judgments that in a similar situation, keeping the proceedings under Section 174-A of the IPC alive would be an abuse of process of law. Moreover, the order declaring the petitioner as proclaimed person would prove to be insignificant inasmuch as the main complaint filed under Sections 138/141 of the Act of 1881 itself has been withdrawn.

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 order dated 04.10.2021 (Annexure P-7) is set aside and FIR No.574 dated 11.10.2021 registered under Section 174-A of the IPC at Police Station Hisar City, District Hisar, Haryana and all the subsequent proceedings arising therefrom are quashed/set aside.

In this case, notice has not been issued to respondent No.2 as no order prejudicial to the rights of respondent No.2, is being proposed to be passed by this Court and issuance of notice would only further delay the matter which would cause prejudice to respondent No.2 and thus, the present petition is disposed of without issuance of notice to respondent No.2.

12.05.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No