

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

**CRM-M-21765-2022 (O & M)
Date of decision: 25.08.2022**

Harwinder Singh ... Petitioner

V/s

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amit Arora, Advocate, for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The present petition under Section 482 Cr.P.C. has been filed for quashing FIR No.171 dated 26.07.2019 under Section 174-A IPC registered with Police Station Sadar Tarn Taran, District Tarn Taran (Annexure P-2) and also all subsequent proceedings emanating therefrom.

2. The brief facts of the case are that the HDFC Bank instituted a complaint under Section 138 and 142 of the Negotiable Instruments Act, 1881 against the petitioner on the ground that the petitioner-Harwinder Singh had availed a KGC loan facility as well as term limit loan facility from the complainant-Bank to the tune of Rs.8,50,000/- through Loan account No.06418680001349 and in discharge of his liability had issued the cheque bearing No.008351 dated 07.03.2017 for a sum of Rs.8,50,000/- drawn at Centurian Bank of Punjab Ltd. now known as HDFC Bank which

on presentation was returned dishonored with the remarks “Funds Insufficient” vide memo dated 22.05.2017. Thereafter, the complainant-Bank had issued a legal notice dated 10.06.2017 but despite receipt of the aforesaid notice the petitioner had failed to make the payment. Therefore, the complainant (Annexure P-1) was instituted at the instance of HDFC Bank.

3. The learned counsel for the petitioner contends that the petitioner was never served in the said complaint and the Chief Judicial Magistrate vide its order dated 09.03.2018 had issued proclamation under Section 82(1) Cr.P.C. and vide its order dated 30.11.2018, the Chief Judicial Magistrate directed the SHO, Police Station Sadar Tarn Taran to initiate proceedings against the petitioner/accused-Harwinder Singh under Section 174-A IPC. Accordingly, an FIR No.171 dated 26.07.2019 under Section 174-A IPC with Police Station Sadar Tarn Taran, District Tarn Taran came to be registered against the present petitioner. The learned counsel contends that vide order dated 03.12.2019 (Annexure P-3) passed by the Additional Sessions Judge, Tarn Taran, the petitioner was granted the concession of interim anticipatory bail, which was confirmed vide order dated 13.12.2019 (Annexure P-4). Thereafter, the petitioner came to know about the pendency of the complaint under Section 138 Negotiable Instruments Act, 1881 instituted by the HDFC Bank.

The learned counsel for the petitioner further submits that the petitioner/accused had compromised the said matter and repaid the entire loan amount to the complainant-Bank. No objection certificate dated 22.02.2022 issued by the complainant-Bank in favour of the petitioner

effected between the parties, the matter was taken up before the Lok Adalat and after recording the statement of both the parties on 18.02.2022, the complaint under Section 138 of the Negotiable Instruments Act was dismissed as withdrawn and petitioner/accused-Harwinder Singh was acquitted of the notice served upon him vide order dated 12.03.2022 (Annexure P-6).

The learned State counsel has opposed the present petition and has submitted that the FIR has been correctly registered.

This Court has heard the learned counsel for the petitioners and the learned State counsel and has perused the paper-book.

From the above-said facts and circumstances, it is apparent that the present FIR was registered in view of the fact that the petitioners were declared as a proclaimed persons in the proceeding under Section 138 of the Act of 1881. The impugned complaint under Section 138 of the Act of 1881 itself 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 (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 IPC in view of the order passed in proceedings under Section 138 of the Act, while declaring the petitioner therein as proclaimed offender, a co-ordinate Bench after relying upon various judgments observed that once the main case 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 would be nothing but an abuse of the process of law. The said aspect was one of the main considerations for allowing the petition and setting aside the order declaring the petitioner therein as a proclaimed person as well as quashing of the consequential 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)

“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. A similar view has been expressed by this Court in “Anil Kumar Versus Jitender Kumar and another, CRM-M-5878-2022 decided on 06.04.2022”, “Anil Kumar Versus Jitender Kumar and another, CRM-M-5755-2022 decided on 06.04.2022” and “Varinder Kumar @ Virender Kumar Versus State of Haryana and another, CRM-M-42551- 2021 decided on 19.04.2022”.

In the present case the proceedings under Section 138 NI Act have culminated in a settlement with the withdrawal of the complaint under Section 138 NI Act.

In view of the above, the present petition is allowed and FIR

registered with Police Station Sadar Tarn Taran, District Tarn Taran and all subsequent proceedings emanating therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

August 25, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No