

CRM-M-23492 of 2022
CRM-M-23404-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CRM-M-23492-2022

Date of Decision: September 20, 2022

PATEL SHAILESH KUMAR AND OTHERS

...Petitioners

Versus

THE STATE OF HARYANA AND ANOTHER

...Respondents

CRM-M-23404-2022

PATEL SHAILESH KUMAR AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Abhimanyu Singh, Advocate for the petitioners.

AMAN CHAUDHARY, J

As common question of law and facts are involved in both the abovementioned cases i.e. CRM-M-23492-2022 and CRM-M-23404-2022, between the same parties, the same are being decided together. The facts are being extracted from CRM-M-23492-2022.

The present petition has been filed under Section 482 of Cr.P.C. for quashing of FIR No.787 dated 20.12.2017, registered under Section 174-A of the Indian Penal Code, 1860 at Police Station Civil Lines, Gurgaon, District Gurugram alongwith subsequent proceedings arising therefrom.

Learned counsel for the petitioners submits that the petitioners are the Directors of a private limited company, against whom a complaint

had been filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') on account of 3 cheques dated 27.1.2016, 30.1.2016 and 9.2.2016, which were dishonoured with remarks 'funds insufficient' vide memo dated 3.5.2016. The petitioners were summoned for 26.9.2021, in the said complaint by the learned trial Court vide order dated 1.8.2016, Annexure P-2. It is his submission that since, the petitioners were not properly served in the complaint, therefore, they were not aware of about its pendency, owing to which, they would not appear before the Court in terms of the summons having been issued. Consequently, vide order dated 14.7.2017, they were declared proclaimed person and intimation regarding the same was directed to be sent to the concerned police station to initiate the proceedings against them under Section 174A IPC. He submits that non-appearance of the petitioners before the trial court was neither intentional nor deliberate because they being the residents of State of Gujarat and proper service was not effected upon them. The mandatory provisions of Section 82/83 Cr.P.C. were also not complied with, inasmuch as the proclamation was not read out publically in the area where they were residing. He submits that the FIR dated 20.12.2017 under Section 174A IPC was registered against the petitioners pursuant to the direction passed by learned trial Court vide impugned order dated 14.7.2017. He further submits that on coming to know about the pendency of the lodging of the FIR and criminal complaint as well as order dated 14.7.2017, declaring the petitioners as proclaimed person, they surrendered before the trial Court and were granted bail vide order dated 16.2.2018, Annexure P-5 and 19.2.2018, Annexure P-6. Learned counsel further submits that the matter in dispute

between the petitioners and the complainant was amicably settled, based on which, the offence was compounded and the proceedings against them were dropped by the learned trial Court vide order dated 26.3.2019, Annexure P-7. It is further submitted that order dated 14.7.2017 passed by learned trial Court declaring the petitioners as proclaimed persons was also taken in revision at the hands of co-accused Gandhi Tejaskumar and the same was set aside by the learned Additional Sessions Judge, Gurugram vide order dated 2.5.2018, Annexure P-8 on the ground that the statutory provisions of law had not been followed before passing the impugned order.

Learned counsel for the petitioners submits that the case of the petitioners is also identical to the case of the co-accused, who was also declared as proclaimed person. He further submits that once the matter has been settled between the parties and the petitioners had surrendered before the trial court and were granted bail after having been declared proclaimed person and the FIR having been lodged against them as also the fact that the order dated 14.7.2017, vide which the similarly situated co-accused was also declared as proclaimed person, had been set aside by learned Additional Sessions Judge, continuation of proceedings in the FIR case against the petitioners would be an abuse of process of law. In support of his submissions, learned counsel places reliance upon the following judgments of various co-ordinate Benches of this Court to contend that in the similar set of facts and circumstances wherein the complaint filed under Section 138 of the Negotiable Instruments Act, 1881, itself stands withdrawn, the proceedings initiated under Section 174-A IPC were quashed being an abuse of process of law:-

1. **“Murli Jha vs State of Haryana”, 2021(3) R.C.R.(Criminal)563.**
2. **“Microqual Techno Limited and others vs State of Haryana”, 2015(3) R.C.R.(Criminal) 790.**
3. **“Ram Kumar Rana vs State of Haryana and another”, 2022(1) R.C.R. (Criminal) 294.**
4. **“Ashok Madan vs State of Haryana and another”, 2020(4) R.C.R. (Criminal) 87.**

Notice of motion.

At the asking of the Court, Mr. Gaurav Bansal, AAG,Haryana, accepts notice on behalf of the respondent-State and affirms the factum of compromise of the matter.

As no order prejudicial to the rights of the complainant, is being proposed to be passed by this Court, which would cause prejudice to the complainant and therefore, the present petition stands disposed of without issuance of notice to the complainant.

A Co-ordinate Bench in the case of **Murli Jha** (supra) held as under:-

“8. I have considered the rival submissions of the parties. The FIR is an outcome of the order declaring the petitioner as a proclaimed person in proceedings initiated under section 138 of NI Act which stands settled, the complaint has been withdrawn and the proceedings against the accused petitioner were dropped. In such circumstances, the continuation of prosecution under Section 174-A IPC in pursuance to the orders passed by the trial Court cannot be permitted to continue. Reference in this connection may be made to the judgments of this Court in Microqual Techno R.C.R. (Criminal) 790; Rajneesh Khanna v. State of Haryana and another, 2017 (3) L.A.R. 555 and CRM-M32612 of 2020, Surender Singh v. State of Haryana and another decided on 12.01.2021. ”

Furthermore, in CRM-M-43813-2018 titled as "Baldev

Chand Bansal vs. State of Haryana and another", decided on

29.01.2019 a Co-ordinate Bench of this Court has held as under:-

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"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. 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 aforesaid facts and circumstances of the case that the complaint filed under Section 138 of the Negotiable Instruments Act, 1881, itself having been withdrawn, and in view of the judgment in cases of **Murli Jha** and **Baldev Chand Bansal** (supra), FIR No.787 dated 20.12.2017, registered under Section 174-A of the Indian Penal Code, 1860 at Police Station Civil Lines, Gurgaon, District Gurugram is quashed, subject to payment of costs of Rs.10,000/- to be deposited with the Poor Patients' Welfare Fund at PGIMER, Chandigarh.

Both the petitioner stand disposed of accordingly.

September 20, 2022
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(AMAN CHAUDHARY)
JUDGE

Whether reasoned/speaking: Yes /No

Whether reportable: Yes/ No