

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-24609-2021(O&M)
Date of decision : 29.11.2022

Sunil Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Narender Kaajla, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is the petition under Section 482 Cr.P.C. with a prayer for quashing of FIR no.268 dated 01.04.2020 registered under Section 174-A IPC at Police Station HTM Hisar.

Learned counsel for the petitioner has submitted that in the present case HDFC Bank had filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (in short "N.I.Act") against the present petitioner and in the said proceedings, the petitioner vide order dated 02.07.2018 passed by the Judicial Magistrate Ist Class, Hisar, was declared as proclaimed person and it was directed that SHO concerned would register an FIR and in pursuance of the same, the present FIR has been registered. It is further submitted that the petitioner had surrendered and appeared in the proceedings under Section 138 of the N.I. Act and has

that after surrendering, the matter has been compromised and the complainant HDFC Bank had taken back its complaint and the same has been dismissed as withdrawn vide order dated 25.02.2021. It is stated that the petitioner had also joined the proceedings under Section 174-A IPC and had been granted bail by the Additional Sessions Judge, Hisar vide order dated 28.05.2020. It is further stated that in view of the same, the continuation of the present FIR would be an abuse of the process of the Court. It is submitted that this is the only one case against the present petitioner under Section 138 of the N.I. Act, which has been instituted by the HDFC Bank.

Learned State counsel, on the other hand, has opposed the petition and has submitted that the present FIR has been rightly registered in pursuance of the order passed by the JMIC, Hisar, on 02.07.2018.

This Court has heard learned counsel for the parties.

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 petition 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 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 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 IPC shall be abuse of the process of court.

In the present case, the petitioner was declared as a proclaimed person vide order dated 02.07.2018 in the proceedings which were instituted by the HDFC Bank in a complaint case under Section 138 read with Section 142 N.I. Act and direction was given by the Judicial Magistrate Ist Class to the concerned SHO to register an FIR and in pursuance of the said order, the present FIR under Section 174-A IPC was registered and vide order dated 30.07.2019 the petitioner had surrendered and had joined the proceedings under Sections 138 read with 142 of the N.I. Act and a perusal of the order dated 25.02.2021 (Annexure P-6) would show that the matter was compromised and the complainant i.e., HDFC Bank had withdrawn its complaint under Section 138 read with Section 142 of the N.I. Act. The petitioner has also been granted anticipatory bail in the present FIR under Section 174-A IPC vide order dated 28.05.2020 and thus, keeping the present proceedings under Section 174-A IPC alive would be an abuse process of the Court.

Keeping in view the above said facts and circumstances as well

as the law laid down in the above said judgments, the present petition is allowed and the FIR no.268 dated 01.04.2020 registered under Section 174-A IPC at Police Station HTM Hisar and all the subsequent proceedings arising therefrom are hereby quashed.

(VIKAS BAHL)
JUDGE

November 29, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No