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

CRM-M-24826-2022.
Decided on : June 02, 2022.

Davindra Mahajan

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr.Rishu Mahajan, 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. with a prayer for quashing of FIR No.880 dated 20.05.2019 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Shivaji Nagar, Gurugram and all the consequential proceedings arising therefrom.

Learned counsel for the petitioner has submitted that Sunaura Technologies Private Limited had filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, read with Section 120-B and 420 IPC, against the present petitioner and

two more accused. It is further submitted that the petitioner was not aware of the said proceedings and was declared a proclaimed person on 7.5.2018 by the learned Judicial Magistrate First Class, Gurugram, with a direction to the concerned Police Station, to initiate proceedings under Section 174-A IPC and on account of the same the impugned FIR was registered under Section 174-A IPC. It is further submitted that thereafter, the petitioner was arrested on 7.8.2019 and was granted bail and he compromised the matter with the complainant in the complaint under Section 138 of the Negotiable Instruments Act and vide order dated 16.1.2020, the said complaint under Section 138 of the Negotiable Instruments Act, has been withdrawn in view of the compromise. It is further submitted that since the main proceedings under Section 138 of the Negotiable Instruments Act, have already been compromised thus, keeping the present FIR alive would be an abuse of the process of the Court.

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 under Section 482 Cr.P.C. and has submitted that the FIR has been registered in pursuance of order dated 7.5.2018 passed by the Judicial Magistrate First Class, Gurugram vide which the petitioner was declared as a proclaimed person.

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 174 A 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, it is not in dispute that the complaint under Section 138 of the Act of 1881 was filed by Sunaura Technologies Private Limited and it is in the said proceedings that the petitioner was declared as proclaimed person vide order dated 7.5.2018 and a direction was given to the concerned Police Station to initiate proceedings against the petitioner under Section 174-A IPC and in pursuance of the said impugned order, present FIR under Section 174-A of the IPC, was registered.

A perusal of the order dated 16.1.2020 (Annexure P-3) would show that there has been a compromise in the said complaint under Section 138 of the Act of 1881 and the complainant has withdrawn the said complaint. The order dated 16.1.2020 is reproduced hereinbelow:-

*“Present: AR of complainant in person with
Sh. Vijay Shukla, Adv.*

*Accused Devandra Mahajan on bail with
Sh.Rajesh Sabhaarwal, Adv.*

*Accused Rakesh Goswami already acquitted
vide order and judgment dated 23.05.2019.*

Today the case was fixed for cross examination of DW1. However, AR of complainant appeared and suffered a statement that complainant wants to withdraw the present complaint as payment has been made by accused pertaining to the cheque and prayed that present complaint may kindly be dismissed as withdrawn. In view of his statement, present complaint stands dismissed as withdrawn. Proceeding against accused stands dropped.

An application for release of surety deposited at the time of getting bail has been moved by surety Divya Mahajan. File perused. Perusal of file reveals that accused Devandra Mahajan was declared Proclaimed Person vide order dated 07.05.2018 passed by my Ld. Predecessor Court and after that on 08.08.2019, he was produced in custody after his arrest and he was allowed bail on furnishing of bail bonds and surety bonds in the sum of Rs.30,000/- and on 13.08.2019 accused has furnished requisite bonds. Perusal of bonds furnished by accused shows that he has furnished FDR in the name of

Ms. Divya Mahajan dated 12.08.2019 for an amount of Rs.50,000/- drawn on Indian Bank and same has been attached with the case file. As the complainant has withdrawn the present case, therefore, this FDR is no more required on the case file. Hence, said FDR be returned to the applicant who has stood as surety for the accused against proper receipt and identification. Copy of this document be placed on record. File be consigned to record room after due compliance.

*Date of order:-16.01.2020 (Upendra Singh),
JMIC/Gurugram
UID No. HR0362.”*

It is the case of the petitioner that he was not aware of the proceedings under Section 138 of the Act of 1881 and was subsequently arrested and released on bail. It has been held in the abovesaid judgments that in similar situation, keeping the proceedings under Section 174-A of the IPC alive would be an abuse of the process of the Court. Moreover, the order declaring the petitioner as proclaimed person would prove to be insignificant inasmuch as the main complaint filed under Section 138 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 FIR No.880 dated 20.05.2019 registered under Section 174-A of the Indian Penal Code, at Police Station Shivaji Nagar, Gurugram and all the subsequent proceedings arising therefrom are

quashed/set aside.

June 02, 2022.
raj arora

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No