

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-25410-2022

Date of Decision: 18.08.2022

Ramesh Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Jagtej Singh Kang, Advocate for
Mr. K.P.S. Virk, Advocate for the petitioner.

Mr. Tanuj Sharma, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

This is a petition filed under Section 482 Cr.P.C. for quashing of order dated 17.01.2022 (Annexure P-4) passed by the learned Judicial Magistrate Ist Class, Jind, whereby the petitioner had been declared as proclaimed person in Criminal Complaint No. NACT/229/2016 dated 29.07.2016, titled as 'Rajpal Vs. Ramesh Kumar', filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as-'the Act') and all subsequent proceedings arising therefrom.

Briefly stated that complainant-Rajpal filed a complaint dated 29.07.2016 (Annexure P-1) under Section 138 of the Act against the petitioner, on account of dishonouring of a cheque amounting to Rs.90,000/- issued by the petitioner in favour of the complainant. During

the pendency of the complaint, a compromise was effected between the parties. As per the compromise, complainant-Rajpal, had agreed to withdraw his complaint and the petitioner will make the payment of the dishonoured cheque. In compliance of the compromise, the petitioner had made the payment to the complainant and Rajpal had assured petitioner that he will withdraw his complaint on the next date of hearing before the trial Court i.e. 14.07.2021 . However, due to some communication gap the complaint was not withdrawn by the complainant and the petitioner did not appear before trial Court and remained absent on 14.07.2021. Consequently, the trial Court initiated proclamation against the petitioner vide order dated 30.09.2021 (Annexure P-2). Subsequently, the trial Court declared the petitioner as proclaimed person vide impugned order dated 17.01.2022 (Annexure P-4) and direction was issued to the concerned SHO for registration of FIR under Section 174-A IPC against the petitioner. Later on, complainant-Rajpal moved an application dated 17.05.2022 before the trial Court for withdrawal of complaint (Annexure P-1) and the same was dismissed as withdrawn vide order dated 17.05.2022 (Annexure P-5). Despite withdrawal of the main case, the police is raiding the house of petitioner to arrest him in pursuance of the order dated 17.01.2022 (Annexure P-4). Hence, the present petition.

Learned counsel for the petitioner contends that once the proceedings under Section 138 of the Act, have been withdrawn, the continuation of proceedings under Section 174-A IPC pursuant to the order declaring the petitioner as proclaimed offender as well as directing the registration of FIR, would be an abuse of process of law. In support

of his contention, learned counsel for the petitioner has relied upon a judgment of this Court in *Narender Singh Vs. State of Haryana and others, 2022 (2) RCR (Criminal) 683*.

On the other hand, learned counsel for the State vehemently opposed the present petition and submitted that the petitioner has rightly been declared as proclaimed person by the trial Court.

I have heard learned counsel for the parties and has perused the paper-book.

It is not in dispute that petitioner was declared as proclaimed person vide order dated 17.01.2022 (Annexure P-4) and directions were issued to register FIR against him under Section 174-A IPC, in the complaint filed by complainant-Rajpal, under Section 138 of the Act. It is also not disputed that in the proceedings under Section 138 of the Act, the matter has been compromised and the said complaint was dismissed as withdrawn vide order dated 17.05.2022 (Annexure P-5).

In *Narender Singh's case (supra)*, it was held by this Court that once complaint under Section 138 of the Act was withdrawn, then continuance of prosecution in FIR under Section 174-A IPC would be abuse of process of Court.

A Coordinate 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 as proclaimed offender in the said proceedings, a Co-ordinate Bench of this Court 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.

In the present case the complaint under Section 138 of the

Act of 1881 has been withdrawn. Once the impugned case has been withdrawn, then the continuance of the prosecution in the FIR under Section 174-A of IPC would be an abuse of the process of Court.

Keeping in view the above facts and circumstances, the present petition is allowed and the order dated 17.01.2022 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Safidon, District Jind, whereby the petitioner was declared as proclaimed person and all the subsequent proceedings arising therefrom, are hereby quashed.

August 18, 2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No