

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

CRM-M-46062-2017 (O & M)

Date of decision: 20.07.2022

Jatin Dhawan and anr.

.... Petitioners

V/s

State of Haryana and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ramesh Sharma, Advocate, for the petitioners.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Sudesh Kumar, Advocate, for respondent No.2.

JASJIT SINGH BEDI, J. (Oral)

The present petition under Section 482 Cr.P.C. has been filed for the quashing of the proclamation order dated 01.07.2017 vide which the petitioners were declared proclaimed persons in complaint No.805 of 2014 dated 06.10.2014 under Section 138 of the Negotiable Instruments Act, (for short the 'N.I. Act') passed by the Judicial Magistrate Ist Class, Panipat (Annexure P-1) titled as The Panipat HSEB Cooperative H/B Society, Panipat through its Secretary versus Jatin Dhawan etc. with a further prayer for quashing an FIR No.0914 dated 17.10.2017 under Section 174-A IPC registered with Police Station Model Town, Panipat (Annexure P-5).

2. The learned counsel for the petitioners submits that a complaint bearing NACT No.805 of 2014 titled as 'The Panipat HSEB Cooperative H/B Society, Panipat through its Secretary versus Jatin Dhawan etc. was

filed under Section 138 read with Section 142 N.I. Act before the Court of Judicial Magistrate Ist Class, Panipat.

3. The brief facts of the case are that the above titled complaint was filed by one R.K. Paul, who was the authorized signatory of the Panipat HSEB Cooperative H/B Society. It was alleged in the complaint that the complainant-Society and the accused-petitioners entered into an agreement for providing services for getting the license for the complainant on the term and conditions mentioned in the agreement. Later on when the complainant made the payment of their part as per the agreement and requested the petitioners to make the payment of their part, they issued a cheque bearing No.585653 dated 18.09.2013 amounting to Rs.40,00,000/- in favour of the complainant-Society but on its presentation, the same was returned back on 25.09.2013 with the remarks 'funds insufficient'. The accused-petitioners issued a post dated cheque No.005664 dated 15.01.2014 amount to Rs.40,00,000/- once again, the said cheque was also returned vide memo dated 03.02.2014 with the remarks "accounts closed". Thereafter, the accused-petitioners again issued a cheque No.585663 dated 10.08.2014 amounting to Rs.90,00,000/-, which was also returned vide memo dated 12.08.2014 with the remarks "funds insufficient". Accordingly, the present complaint under Section 138 N.I. Act readwith Section 142 N.I.Act was filed against the accused-petitioners before the Court of Judicial Magistrate Ist Class, Panipat. It is submitted that the addresses given in the complaint were not proper and existing addresses of the petitioners, therefore, they were never served in the said proceedings. On the basis of the report received from the process serve, the Trial Court initiated the proceedings under Section 82/83 Cr.P.C. against the petitioners on the given address and

01.07.2017 (Annexure P-1). It was only after the petitioners made the payment to the complainant-Society, then it was disclosed to the accused-petitioners that the complainant had filed a complaint under Section 138 N.I. Act in which they (petitioners) were declared proclaimed persons.

4. It is stated that the matter between the parties had already been settled vide compromise deed (Annexure P-4) and on the basis thereof, the aforesaid complaint was withdrawn by the complainant-Society on 23.10.2017. A photocopy of the aforesaid order is Annexure P-3.

The learned counsel for the petitioner submits that since the complaint bearing No. NACT-805/2014 has already been dismissed as withdrawn, therefore, the impugned order dated 01.07.2017 (Annexure P-1) and the impugned FIR No.0914 dated 17.10.2017 under Sections 174-A IPC (Annexure P-5) are liable to be quashed.

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 petition under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, the continuation of proceedings under

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 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 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 proclamation order dated 01.07.2017 (Annexure P-1) and FIR No.0914 dated 17.10.2017 (Annexure P-5) under Section 174-A IPC registered with Police Station Model Town, Panipat and all consequential proceedings arising therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

July 20, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No