

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

Sr. No. 240

CRM-M-46463-2017

Date of decision : 29.8.2022

Gyaninder Sadana and another

.....Petitioner(s)

VERSUS

State of Haryana and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Aditya Jain, Advocate for the petitioners

Ms.Aditi Girhdar, AAG, Haryana

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed for setting aside the order dated 19.8.2017 (Annexure P2) passed by learned Judicial Magistrate, 1st Class, Faridabad whereby the petitioners were declared as proclaimed offenders in a complaint case No.NACT/3770/2016, titled as 'Tara Devi vs. Laxmi Lighting' under Section 138 of the Negotiable Instruments Act.

Shorn of all unnecessary details, the brief facts of the case for its disposal are that in the complaint filed by complainant- respondent No.2 against the petitioners under Section 138 of the NI Act for dishonour of their cheque dated 18.7.2017, amounting to Rs.45000/-, non-bailable warrants were issued on 8.11.2016 against the petitioners for 24.1.2017.

However, when the warrants were received unexecuted, the trial Court

directed to initiate the proceedings under Sections 82(1) Cr.P.C. against them. When despite report of proclamation having been received back duly published on 4.7.2017, the petitioners did not appear before the trial Court, they were declared proclaimed offenders vide order dated 19.8.2017 by the trial Court and the SHO concerned was directed to initiate the proceedings under Section 174-A IPC against them. Thus, FIR No.640 dated 6.10.2017, under Section 174A IPC came to be registered against the petitioners.

Learned counsel appearing on behalf of the petitioners has tried to justify their absence on the ground that the the actual service had never been affected upon them. It is, thus, contended that non-appearance of the petitioners was not on account of any deliberate attempt to avoid appearance before the Court but was on the aforesaid reason. Learned counsel further contended that apart from the above, in the meantime even the parties had amicably resolved their dispute. In support thereof, he has made reference to the *zimni* order dated 8.11.2017, Annexure P-4, passed by Judicial Magistrate 1st Class, Faridabad, announced in the Lok Adalat, wherever, the aforesaid fact finds recorded and the compliant itself stood withdrawn based on a statement made by the complainant herself that she had received the amount due to her from the petitioner. The order dated 8.11.2017 reads thus:-

“Complainant /applicant Tara Devi has made a statement that she has compromised the matter with the accused and she has received the cheque amount from the accused. Therefore, she does not want to proceed further with the present complaint and withdraw the same. Her statement in this

regard recorded separately.

Heard. In view of the statement made by complainant, the present complaint is hereby, dismissed as withdrawn.”

Learned counsel for the petitioners has therefore contended that the complaint, which was the cause of registration of the instant FIR, the non-appearance in the proceedings thereof had led to the issuance of order of proclamation, has already been settled between the parties, thus it would not advance any interest of justice to continue the proceedings against the petitioners initiated on account of registration of the FIR. Learned counsel submits that though there is no specific prayer in the petition to quash the FIR, but given the above facts prays that the FIR being consequent proceedings of the impugned order may also be quashed.

Learned State counsel raises no serious objection to the contention raised on behalf of the petitioners, as he is unable to controvert the aforesaid factum of withdrawal of the complaint itself based on the statement of the complainant herself and for quashing of resultant proceedings of FIR.

Heard the learned counsel for the parties.

It would be apposite to refer to the judgment on the issue involved in the present case.

A Co-ordinate Bench of this Court in “**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.

Further in CRM-M-7354 of 2022, decided on 22.02.2022 titled as **“Prem Bansal Vs. State of Haryana & Another”** a Co-ordinate Bench of this Court held as under:-

'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 (CrI.) 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.”

The object of issuance of summons, warrants and proclamation proceedings being to secure presence of an accused to face trial and to establish rule of law so that the proceedings could be finalized, however, once the basic dispute and substantive proceedings, wherefrom the order declaring the accused-petitioner as proclaimed person came to be passed, have already been amicably resolved amongst the parties, resulting in withdrawal of the complaint itself or the quashing of such proceedings, as the case may be, continuation of proceedings initiated as result of intermediary orders would not serve any purpose and need to be quashed as they no longer advance the interest of justice. The substantive proceedings under Section 138 of the Negotiable Instruments Act, which are quasi-criminal, the object of which once achieved, either they having been decided on merits or otherwise, the Court should adopt a liberal approach towards the accused, who has already redressed the grievance of the complainant.

Thus, in view of the above and at this stage not going into the controversy, as to whether the service was correctly and properly effected upon the petitioners or not, and after noticing the vital fact of the matter that the main case already stands settled between the parties, in view of compromise, as a consequence of which, the complaint itself had been withdrawn, the continuation of the proceedings in the FIR under Section

174-A IPC, which are only, as an outcome of the proceedings initiated basis the said complaint, would serve no purpose whatsoever.

Accordingly, the petition is allowed. The order dated 19.8.2017 (Annexure P2) passed by learned Judicial Magistrate, 1st Class, Faridabad is set aside and the resultant proceedings in form of FIR No.640 dated 6.10.2017, registered under Section 174-A I.P.C. at Police Station Sector 31, Faridabad are quashed.

29.8.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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