

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

CRM-M-26368-2022 (O & M)

Date of decision: 15.07.2022

Shamsher Singh

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Nirmaljeet Singh Sidhu, Advocate, for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The present petition under Section 482 Cr.P.C. has been filed for the quashing of FIR No.20 dated 23.02.2018 under Sections 174-A IPC registered with Police Station Phul, District Bathinda (Annexure P-3) as well as order dated 19.04.2022 (Annexure P-5) alongwith all consequential proceedings arising therefrom.

The learned counsel for the petitioner submits that a complaint titled as 'The Bathinda Central Co-operative Bank Ltd. Branch at village Mehraj Tehsil and District Bathinda through Ishwar Singh versus Shamsher Singh (Annexure P-1) was filed under Section 138 read with Section 142 N.I. Act read with Section 420 IPC before the Court of Judicial Magistrate Ist Class, Phul. The petitioner was never served properly in the aforesaid complaint through the ordinary process, registered cover or otherwise and he never refused to receive the summons, and therefore, the petitioner was totally unaware about the pendency of the aforesaid complaint. Since the

petitioner could not be served properly, therefore, he could not join the proceedings in the complaint under Section 138 of the N.I.Act. On 02.02.2018, the Trial Court passed an order (Annexure P-2) declaring the petitioner a proclaimed offender. Thereafter, an FIR No.20 dated 23.02.2018 under Section 174-A IPC with Police Station Phul, District Bathinda, (Annexure P-3) has been registered against the petitioner.

He further submits that this Court vide order dated 23.05.2019 (Annexure P-4) had granted the concession of anticipatory bail to the petitioner. It is further contended that the charges were framed against the petitioner by the Trial Court vide order dated 19.04.2022 (Annexure P-5). He further submits that the aforesaid complaint i.e. Complaint No.COMA-64/2016 was withdrawn on the basis of compromise. Consequently, the petitioner had been discharged in the said complaint vide order dated 25.05.2022 (Annexure P-6) passed by the Trial Court.

The learned counsel for the petitioner submits that since the complaint No.COMA-64/2016 has already been dismissed as withdrawn, therefore, the impugned order dated 19.04.2022 (Annexure P-5) and the impugned FIR No.20 dated 23.02.2018 under Sections 174-A IPC under Sections 174-A IPC (Annexure P-3) are liable to be quashed. Reliance is placed on various judgments passed by this Court in the cases of ***“Raj Kumar versus State of Haryana, (CRM-M-5895-2012 decided on 13.09.2012), Vikas Sharma versus Gurpreet Singh Kohli and another, (CRM-M-32465-2017 decided on 13.09.2017), Rajneesh Khanna versus State of Haryana and another, (CRM-M-3813-2017 decided on 26.10.2017), Inderpal versus State of Haryana, (CRM-M-31208-2017 decided on 23.05.2018) and Vikas Gupta***

versus State of Haryana and others, (CRM-M-19636-2018 decided on 01.08.2018)”.

Notice of motion.

Mr. Kirat Singh Sidhu, DAG, Punjab, who is present in the Court, accepts notice on behalf of the respondent-State. He has opposed the present petition and has submitted that the FIR has been correctly registered.

This Court has heard the learned counsel for the petitioner 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 petitioner was declared as a proclaimed person 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 Section 174-A IPC is nothing but an abuse of the process of law. The said 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:-

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 FIR No.20 dated 23.02.2018 under Sections 174-A IPC registered with Police

19.04.2022 (Annexure P-5) and all consequential proceedings arising therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

July 15, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No