

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

202

CRM-M-25373-2019

Date of Decision: 31.03.2022

Charan Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Yashveer Kharb, Advocate, for the petitioner.

Mr. Ashish Yadav, Addl. AG, Haryana.

Mr. Shailender Kashyap, Advocate, for respondent No.2.

VINOD S. BHARDWAJ , J.(Oral)

1. The question that arises for consideration in the instant petition is as to whether an FIR under Section 174-A of the Indian Penal Code, 1860 can be quashed once the substantive complaint wherefrom the proceedings had emanated itself stand settled amongst the parties?

2. The instant petition has been filed under Section 482 Cr.P.C. for seeking quashing of the order dated 11.09.2018(Annexure P-1) passed by the Judicial Magistrate 1st Class, Panipat, declaring the petitioner as a proclaimed person and of the consequential registration of FIR No.0470 dated 20.11.2018 registered under Section 174-A IPC at Police Station Matlauda, District Panipat(Annexure P-2) along with all proceedings arising therefrom.

3. The brief reference to the facts as are necessary for appreciating the controversy involved in the instant case are that the petitioner claims to

have taken loan from respondent No.2-HDFC Bank and due to inadvertent

default on the part of the petitioner, the cheque issued by him to respondent No.2-Bank was presented without information. The petitioner thus failed to keep adequate balance to ensure that the cheque in question is cleared on its presentation. Resultantly, the proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated by the respondent-Bank. The summons issued to the petitioner could not be served as the petitioner was usually busy in his agricultural land at the time when the official from the Court would ordinarily come to effect service. Finally, proclamation notice was pasted on the outside of the house of the petitioner on 06.08.2018. The petitioner was thereafter declared as a proclaimed person vide impugned order dated 11.09.2018(Annexure P-1) after recording that the petitioner has failed to appear before the Court despite issuance of the proclamation and lapse of the prescribed time.

4. Upon being aware of the proceedings initiated against him, the petitioner enquired about the details of the case, status of loan, installments due against him and immediately cleared the same with the Bank. The said fact is sought to be established by the petitioner by making a reference to the document(Annexure P-3), which is an order dated 18.12.2018 passed by the Judicial Magistrate 1st Class, Panipat, whereby respondent No.2-Bank has withdrawn the complaint stating that the cheque amount along with legal expenses to the tune of ₹1800/- has already been paid by the accused. After the settlement of the said dispute with respondent No.2-Bank, the petitioner has approached this Court raising a challenge to the order dated 11.09.2018(Annexure P-1) passed by the Judicial Magistrate 1st Class, Panipat declaring him as a proclaimed person. It is pointed out that pursuant

Section 174-A IPC, Police Station Matlauda, District Panipat(Annexure P-2) stood registered against the petitioner.

5. Learned counsel appearing on behalf of the petitioner has submitted that the issuance of the proclamation was bad and that no actual service had been effected upon him. He further submitted that procedure contemplated under Section 82 Cr.P.C. had not been followed, hence the consequent proclamation of the petitioner was improper. The petitioner contended that the actual service could not be effected upon him as being a farmer, he remained busy in his agricultural activities and was thus not available at home whenever officials from the Court had visited to effect the service. It is, thus, contended that non-appearance of the petitioner was not on account of any deliberate attempt to avoid appearance before the Court, rather, proper service was never effected upon the petitioner. Learned counsel further contends that failure to effect service upon the petitioner apart; the parties have also resolved their dispute and now there is no amount due against the petitioner. In support thereof, he has made reference to the order dated 18.12.2018 passed by Judicial Magistrate 1st Class, Panipat, as per which the complainant-respondent No.2 got recorded his statement to the effect that compromise between the parties had been effected and had withdrawn the complaint filed by him in acknowledgment of the same. The order dated 18.12.2018(Annexure P-3) passed by Judicial Magistrate 1st Class Panipat is extracted as under:-

“File requisitioned from the records on application of complainant counsel seeking permission to withdraw the complaint stating that cheque amount with legal expenses ₹1800/- has been paid by the accused.

In view of statement of the complainant counsel, the

complaint is dismissed as withdrawn. IA No.02 of 2018 disposed of.

File be consigned to the records after due compliance.”

6. Learned counsel for the petitioner further contends that the complaint, which was the cause of registration of the instant FIR, has already been settled between the parties and it would not advance any interest of justice to continue incarceration of the petitioner in the instant FIR, which arose due to failure of the petitioner to appear in the proceedings in the said complaint.

7. Learned State counsel raises no serious objection to the arguments raised by the petitioner. There is no denial or dispute regarding the statement made by the parties and the final order passed in the complaint.

8. Learned counsel appearing on behalf of complainant-respondent No.2-HDFC Bank has acknowledged that the entire payment has already been made to the Bank and that the complaint instituted by the Bank has been withdrawn. He has no objection to the proceedings and the FIR being quashed.

9. I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

10. In order to appreciate the prayer, it would be essential to refer to certain precedent judgements dealing with the similar issue. A co-ordinate Bench of this Court in the matter of **Ashok Madan Vs. State of Haryana & Another**, passed in CRM-M-51783 of 2018 decided on 28.05.2019 held as under:-

6.No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174-A

IPC 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 proceeding sunder Section 174-A IPC shall be abuse of the process of court.

11. Further in the matter of **Prem Bansal Vs. State of Haryana & Another** passed in CRM-M-7354 of 2022 decided on 22.02.2022, 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.”

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 in the said proceedings, 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 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.”

12. A perusal of the same would show that where the substantive proceedings wherein the order declaring the accused-petitioner as proclaimed person was passed, have already been amicably resolved amongst the parties, resulting in withdrawal of the complaint or the quashing of the proceedings, the FIR registered under Section 174-A IPC as a result of certain interim order passed in criminal proceedings, have also been quashed; the object being to secure presence of an accused and to establish rule of law so that the proceedings could be finalized. Once the parent

dispute stands amicably resolved, the proceedings initiated as a result of

intermediary orders would not sub-serve any interest of justice. Keeping in mind that the proceedings under Section 138 of the Negotiable Instruments Act are quasi-criminal in nature, the objective is to resolve the dispute and when such objective is served, the Court should adopt a liberal approach towards the accused who has already redressed the grievance of the complainant.

13. Without going into the controversy as to whether the service was correctly and properly effected upon the petitioner or not at this stage, and after noticing that the main case already stands settled in view of compromise executed between the parties and the complaint having been withdrawn, the registration of the instant FIR that is only an outcome of the proceedings held in the said compliant, would not serve any purpose by keeping the present FIR and other proceedings alive.

14. The instant petition is accordingly allowed and FIR No.0470 dated 20.11.2018 registered under Section 174-A IPC at Police Station Matlauda, District Panipat(Annexure P-2) along with all subsequent proceedings arising therefrom are **quashed** and the order dated 11.09.2018 (Annexure P-1) passed by the Judicial Magistrate 1st Class, Panipat, vide which the petitioner has been declared as a proclaimed person is **set aside**. However, the same would be subject to payment of costs of ₹10,000/- to be deposited by the petitioner with the 'High Court Bar Clerks' Welfare Fund', within a period of one month from the date of receipt of certified copy of this order.

March 31, 2022
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No