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

CRM-M-29855-2022

Date of decision : 14.07.2022

Rakesh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sukesh Kumar Jindal, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of orders dated 29.11.2019 (Annexure P-3) and 10.02.2020 (Annexure P-8) passed by the Judicial Magistrate Ist Class, Panipat in Criminal Complaint bearing Case No.NACT-855-2018 dated 11.04.2018 titled as HDFC Bank Vs. Rakesh Kumar under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) as well as quashing of FIR No.30 dated 14.01.2021 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station City Panipat as the main complaint has already been withdrawn by the complainant.

Learned counsel for the petitioner has submitted that in the

present case, a complaint under Section 138 of the Act of 1881 was filed by the HDFC Bank, with respect to dishonour of cheque amounting to Rs.2.5 lacs and has further submitted that the petitioner was summoned on 03.08.2018. It is further submitted that the petitioner was never duly served in the said proceedings and was illegally declared as proclaimed person in the proceedings of the said case vide order dated 10.02.2020 (Annexure P-8) on account of his non-appearance. It is argued that Judicial Magistrate Ist Class, Panipat, vide order dated 10.02.2020 had directed the SHO concerned to register an FIR under Section 174-A of the IPC and accordingly, the impugned FIR has been registered under 174-A of the IPC. It is further argued that now the matter has been compromised and the complainant-HDFC Bank has withdrawn the complaint filed under Section 138 of the Act of 1881 vide order dated 14.01.2021 (Annexure P-9).

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and submitted that the FIR has been registered in accordance with law inasmuch as the petitioner was declared as proclaimed person vide order dated 10.02.2020 and the Judicial Magistrate Ist Class, Panipat had directed the SHO concerned to register the present FIR.

This Court has heard the learned counsel for the parties and has perused the paper book.

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 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, 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.”

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 of the IPC shall be an abuse of the process of court.

It is not in dispute that in the present case, complaint under Section 138 of the Act of 1881 was filed by the HDFC Bank with respect to dishonour of cheque amounting to Rs.2.5 lacs and it is in the said proceedings that the petitioner was declared as proclaimed person vide order dated 10.02.2020 and vide the same order, the Judicial Magistrate Ist Class, Panipat, had directed the SHO concerned to register an FIR under Section 174-A of the IPC, on account of which the impugned FIR was registered.

A perusal of the order dated 14.01.2021 (Annexure P-9) would show that the said complainant, in the proceedings under Section 138 of the Act of 1881, has withdrawn the said complaint. The order dated 14.01.2021 is reproduced hereinbelow:-

“Present: Sh. Gagandeep Singh, AR of the complainant bank assisted by Sh. Mukesh Shandilya, Advocate.

Sh. Gagandeep Singh, AR of the complainant bank made statement that as per the instruction of the complainant bank he withdraws the complaint and payment has been made accordingly. Permission granted.

In view of the statement of the AR of the complainant bank, the complaint is dismissed as withdrawn. File be consigned to the records after due compliance.

Sd/- (Ashutosh)

(UID No.HR0363)

JMIC, Panipat

14.01.2021”

It is, thus, apparent that the proceedings under Section 138 of

the Act of 1881 have been withdrawn. It has been held in the abovesaid judgments that in a similar situation, keeping the proceedings under Section 174-A of the IPC alive would be an abuse of the process of law. Moreover, the order declaring the petitioner as proclaimed person would prove to be insignificant inasmuch as the main complaint filed under Section 138 of the Act of 1881 itself has been withdrawn.

Keeping in view the abovesaid facts and circumstances, as well as the law laid down in the abovesaid judgments, the present petition is allowed and orders dated 29.11.2019 (Annexure P-3) and 10.02.2020 (Annexure P-8) as well as FIR No.30 dated 14.01.2021 registered under Section 174-A of the IPC at Police Station City Panipat and all the subsequent proceedings arising therefrom are quashed/set aside.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid order.

14.07.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**