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

CRM-M-30676-2022

Date of decision : 19.07.2022

Ramvir @ Rambir

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jagmohan Ghumman, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.80 dated 10.01.2022 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Shivaji Nagar, District Gurugram and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, a complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) was filed by one Hira Lal, with respect to dishonour of cheque dated 08.02.2009 of an amount of Rs.1.50 lacs and in the said proceedings, the petitioner was never duly served and he was declared as proclaimed person vide order

dated 20.08.2012 (Annexure P-2). It is further submitted that when the petitioner learnt about the said proceedings, the petitioner approached this Court for challenging the said proceedings, vide which the petitioner has been declared as proclaimed person, and a Coordinate Bench of this Court vide order dated 16.05.2022 (Annexure P-3) passed in CRM-M-20972-2022 was pleased to partly allow the said petition and had observed in para 13 of the said order that there shall be a stay of the petitioner's arrest in the case for a period of ten days and as mentioned in para 11 of the said order, the petitioner was directed to surrender before the concerned Court within a period of 10 days from the date of order and on his appearance, the concerned Court was ordered to release the petitioner on bail on the same day subject to his furnishing bail bonds to its satisfaction. It is contended that in pursuance of the same, the petitioner had appeared before the trial Court on 23.05.2022 (Annexure P-6) and was ordered to be released on bail and had also furnished bail bonds. It is further contended that the present FIR has been registered on account of the direction given in the order dated 20.08.2012 passed by the Judicial Magistrate Ist Class, Gurgaon and since, the present petitioner had appeared and joined the proceedings, thus, the order declaring the petitioner as proclaimed person in the proceedings under Section 138 of the Act of 1881 has lost effect, thus, the present FIR also deserves to be quashed and for the same, reliance has been placed upon the judgment passed by a Coordinate Bench of this Court in case titled as ***“Ashok Madan vs. State of Haryana and another”*** reported as ***2020(4) RCR (Criminal) 87.***

Learned counsel for the petitioner has also submitted that the

petitioner is also ready to compensate the complainant in the proceedings under Section 138 of the Act of 1881 by paying an amount of Rs.15,000/- to him.

On advance notice, Mr. Munish Sharma, AAG, Haryana, appears 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 present FIR has been registered in pursuance of order dated 20.08.2012 passed by the Judicial Magistrate Ist Class, Gurgaon, as per which, the order of intimation with respect to petitioner having been declared as proclaimed person was sent to the concerned Police Station.

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

A 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 above order would show that it has been observed by the Coordinate Bench of this Court that once FIR under Section 174-A of the IPC has been registered on account of absence from the proceedings in the main case and which had been subsequently regularised by the said court while granting bail to the petitioner, the default stood condoned. In such circumstances, continuation of proceedings under Section 174-A of the IPC shall be abuse of the process of court.

In the present case, as is apparent from the file, one Hira Lal had instituted a complaint under Sections 138/142 of the Act of 1881 with respect to the dishonour of cheque dated 08.02.2009 to the tune of Rs.1.50 lacs and in the said proceedings, the petitioner was declared as proclaimed person by the Judicial Magistrate Ist Class, Gurgaon and the direction was given to the concerned Police Station to initiate proceedings under Section 174-A of the IPC and accordingly, present FIR dated 10.01.2022 was registered under Section 174-A of the IPC. A perusal of order dated 16.05.2022 (Annexure P-3) passed by the Coordinate Bench of this Court in CRM-M-20972-2022 would show that in a petition filed by the petitioner, the following relief was granted:-

“11. The petitioner shall surrender before the concerned court within ten days from today. On appearance, the concerned court shall release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing additional conditions, as it may deem appropriate in the background of the accused’s conduct.

12. The petitioner to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

*13. **There shall be a stay of the petitioner's arrest in the case mentioned above for ten days;** however, if the petitioner fails to appear within the time stipulated above, then stay on arrest shall stand vacated without any further reference to this court. It is clarified that if the petitioner appears before the concerned court, then all warrants issued by the concerned court against the petitioner, in the matter mentioned above shall stand recalled and canceled. **It is clarified that if the petitioner fails to appear before the concerned court within above mentioned time limit, then this order shall stand recalled automatically under section 362 read with 482 CrPC, without any furtherance reference to this court.**”*

Further perusal of order dated 23.05.2022 (Annexure P-6) would show that the petitioner had surrendered before the Court in pursuance of order passed by the Coordinate Bench of this Court on 16.05.2022 and had also furnished bail bonds to the satisfaction of the trial Court. The petitioner has also undertaken to appear on each and every date before the trial Court unless his personal appearance is specifically exempted by the trial Court.

Keeping in view the abovesaid facts and circumstances, the

present petition is allowed and FIR No.80 dated 10.01.2022 registered under Section 174-A of the IPC at Police Station Shivaji Nagar, District Gurugram and all the subsequent proceedings arising therefrom are quashed/set aside subject to the petitioner depositing an amount of Rs.15000/- with the trial Court in the proceedings under Section 138 of the Act of 1881 within a period of three weeks from today which would be released to the complainant-Hira Lal by the trial Court and would also be subject to the petitioner giving an undertaking to the trial Court in the proceedings under Section 138 of the Act of 1881 that he would appear in the said proceedings before the trial Court on each and every date, unless his appearance is specifically exempted by the Court.

It is, however, clarified that in case, the abovesaid conditions are not complied with within the stipulated period, then the present petition would be deemed to have been dismissed.

19.07.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**