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

CRM-M-32522-2022

Date of decision : 28.07.2022

Rajeev Sharma

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Arun Sharma, Advocate for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.5 dated 09.01.2020 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station City Safidon, District Jind as well as order dated 06.01.2020 in complaint titled as M/s Skylark Versus M/s Sharma Poultries NACT/265/2016 dated 09.09.2016 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”).

Learned counsel for the petitioner has submitted that the

complaint dated 09.09.2016 under Section 138 of the Act of 1881 was instituted by M/s Skylark Farms Shanker Bhawan Railway Road Safidon, District Jind against the present petitioner and the petitioner was not aware about the said proceedings and thus, the petitioner was declared as Proclaimed person vide order dated 06.01.2020 and the Judicial Magistrate Ist Class, Safidon, had directed the concerned SHO to proceed under Section 174-A of the IPC against the petitioner and in pursuance of the said order, FIR under Section 174-A of the IPC was registered on 09.01.2020. It is further submitted that the moment, the petitioner learnt about the said proceedings, the petitioner surrendered and applied for bail in proceedings under Section 138 of the Act of 1881 and was granted the same vide order dated 07.01.2020 passed by the Judicial Magistrate Ist Class, Safidon. It is contended that the petitioner had surrendered prior to registration of the present FIR dated 09.01.2020. It is further contended that the petitioner is regularly appearing before the trial Court in proceedings under Section 138 of the Act of 1881 and has referred to zimni order dated 06.07.2022, on which date, the petitioner had appeared and no defence evidence was present and thus, the case was adjourned to 05.08.2022 for remaining defence evidence and arguments. It is argued that the petitioner could not earlier appeared as he was attending the classes of BA LLB at Motherhood University, Roorkee and was not aware about the proceedings. It is further argued that at any rate, once the petitioner appeared in proceedings under Section 138 of the Act of 1881, the effect of order dated 06.01.2020 has become ineffective and the

proceedings in the FIR deserve to be quashed. Reliance in this regard has been made to the judgments passed by the Coordinate Bench of this Court in **Ashok Madan Vs. State of Haryana and another** reported as **2020(4) RCR (Criminal) 87**, and also **Vikas Sharma Vs. Gurpreet Singh Kohli and another**, reported as **2017(3) L.A.R. 584**.

On the other hand, learned State Counsel has opposed the present petition and submitted that the FIR in the present case has been registered in pursuance of order dated 06.01.2020 passed by the Judicial Magistrate Ist Class, Safidon and thus, the present petition deserves to be dismissed.

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

A co-ordinate Bench of this Court in **Ashok Madan's** case (Supra) has 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.”

Another Coordinate Bench of this Court in **Vikash Sharma's case** (Supra), has also held as under:-

“After the passing of the impugned order declaring him as a proclaimed person, he had surrendered before the trial Court on 29.03.2017 and was ordered to be released on bail. In such circumstances, especially, when the petitioner has duly surrendered before the trial Court, continuation of proceedings under Section 174-A IPC would be an abuse of the process of Court. I draw support from the judgment of a coordinate Bench of this Court in the case of Raj Kumar (supra), wherein it was held that as the petitioner therein had appeared before the trial Court and granted bail, the continuation of criminal proceedings under Section 174-A IPC would amount to an abuse of process of law.

6. Consequently, the impugned order dated 30.08.2016 is set aside and FIR No. 76 dated 17.03.2017 under Section 174-A IPC registered at Police Station Parao, District Ambala Cantt. and all consequential proceedings arising therefrom are hereby quashed qua the petitioner. Order accordingly.”

The petitioner was facing trial in the proceedings under Section 138 of the Act of 1881 and it is the case of the petitioner that he was never served as he was attending the classes of BA LLB from 2016 to 2021 at Motherhood University, Roorkee and vide order dated 06.01.2020, the petitioner was declared as proclaimed person and the

Judicial Magistrate Ist Class, Safidon had also directed the concerned SHO to proceed under Section 174-A of the IPC against the petitioner and in pursuance of said order, FIR in question has been registered on 09.01.2020. A perusal of order dated 07.01.2020 passed by the Judicial Magistrate Ist Class, Safidon would show that prior to registration of FIR, the petitioner had already surrendered in the proceedings under Section 138 of the Act of 1881 and was released on bail. Further a perusal of zimni order dated 06.07.2022 (Annexure P-4) would also show that the petitioner has appeared before the trial Court and case is now adjourned to 05.08.2022 for remaining defence evidence and for arguments.

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 FIR No.5 dated 09.01.2020 registered under Section 174-A of the IPC at Police Station City Safidon, District Jind and all the subsequent proceedings arising therefrom are quashed/set aside subject to the petitioner depositing an amount of Rs.10,000/- with the concerned trial Court, within a period of three weeks from today, which is conducting proceedings under Section 138 of the Act of 1881 and the trial Court is directed to release the said amount of Rs.10,000/- to the complainant therein.

In this case, notice has not been issued to respondent No.2 as the primary prayer in the petition is for only quashing of FIR under Section 174-A of the IPC which has been got registered by order of the Court and thus respondent No.2 is not a necessary party and issuance of

notice to respondent no.2 would only further delay the matter and respondent No.2 would also have to entail expenses in defending the present petition of which he is not a necessary party and thus, the present petition is disposed of without issuance of notice to respondent No.2. At any rate, since respondent No.2 is the complainant in the proceedings under Section 138 of the Act of 1881, thus, compensation has been directed to be paid to respondent No.2.

It is, however, clarified that in case, the abovesaid amount is not deposited within the aforesaid period, then the present petition would be deemed to have been dismissed.

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

28.07.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**