

227-A

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

CRM-M-37734-2021 (O&M)

Date of decision : 01.02.2022

Mohd. Suhel

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Baljeet Beniwal, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

CRM-2432-2022

This is an application filed under Section 482 of Cr.P.C. for preponement of the date of hearing in the main case from 01.02.2022 to some early date.

Application is disposed of as having been rendered infructuous.

Main case

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.60 dated 02.02.2019 registered under Section 174-A of the Indian Penal Code, 1860 at Police Station Faridabad Kotwali, District Faridabad and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, one Anil Dua had instituted a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as “the Act of 1881”) in which, the petitioner was convicted vide judgment dated 12.04.2018 under Section 138 of the Act of 1881 and was directed to pay compensation to the tune of Rs.2,65,000/-. He has further submitted that the petitioner had filed an appeal against the said order and vide order dated 11.05.2018 (Annexure P-1), the Additional Sessions Judge, Faridabad was pleased to suspend the sentence of the petitioner during the pendency of the appeal. On 24.01.2019, the present petitioner was declared as proclaimed person, since the petitioner had not appeared in the proceedings under Section 138 of the Act of 1881 and accordingly, the Additional Sessions Judge, Faridabad had directed the SHO to register an FIR under Section 174-A of IPC and to proceed under Section 83 of Cr.P.C. against the petitioner. It is submitted that in pursuance of the order dated 24.01.2019, the present FIR has been registered.

Learned counsel for the petitioner has submitted that in the proceedings under Section 138 of the Act of 1881, the matter has been compromised and the judgment and the order on quantum of sentence dated 12.04.2018 as well as judgment dated 03.05.2019 vide which the appeal of the petitioner was dismissed, have already been set aside in view of the said compromise and the Criminal Revision bearing CRR-978-2021 filed by the petitioner has been allowed and the petitioner has been permitted to compound the offence. It is contended that in view of the fact that the matter has been compromised in the proceedings under Section 138 of the Act of

1881, no useful purpose would be served in keeping the present FIR under Section 174-A of IPC alive.

Learned State Counsel has opposed the present petition and has submitted that he is fully prepared to argue the matter and assist this Court. He has submitted that the petitioner has been rightly declared as proclaimed person.

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

It is not in dispute that the complaint under Section 138 of the Act of 1881, was filed against the petitioner by one Anil Dua and in the same, the petitioner was convicted vide judgment dated 12.04.2018 and appeal against the same was filed and sentence of the petitioner was suspended pending appeal vide order dated 11.05.2018, and thereafter, vide order dated 24.01.2019, the petitioner was declared as proclaimed person inasmuch as he did not appear in the proceedings under Section 138 of the Act of 1881 before the Additional Sessions Judge, Faridabad and the Additional Sessions Judge, Faridabad had directed the SHO to register an FIR under Section 174-A of IPC. It is not in dispute that the matter under Section 138 of the Act of 1881 has finally been settled between the petitioner and the said Anil Dua and the petitioner in addition to the amount of Rs.2,65,000/- has also undertaken to pay an amount of Rs.30,000/- to the complainant Anil Dua for the full and final settlement of the case. It is not in dispute that the present FIR has been registered on account of non-appearance of the petitioner in proceedings under Section 138 of the Act of 1881, which now stand settled.

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.

xxx xxx xxx

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 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 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 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 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 IPC shall be an abuse of the process of court.

In the present case, once complaint under Section 138 of the Act of 1881 has been finally settled and the proceedings have been compromised, then the continuance of the proceedings under Section 174-A of IPC, would be an abuse of the process of the Court. Since the said FIR was solely registered on account of non-appearance of petitioner in the proceedings under Section 138 of the Act of 1881 and the said matter has been settled, the present FIR deserves to be quashed.

Keeping in view the abovesaid facts and circumstances as well as the authorities of law referred to hereinabove, the present petition is allowed and FIR No.60 dated 02.02.2019 registered under Section 174-A of the Indian Penal Code, 1860 at Police Station Faridabad Kotwali, District Faridabad and all the subsequent proceedings arising therefrom, are hereby quashed.

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

01.02.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No