

125

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

CRM-M-34039-2022

Date of decision : 03.08.2022

Ahmed Deen @ Mota

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vinay Kumar Pandey, 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 FIR No.152 dated 29.05.2022 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station City Nuh, District Nuh and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, wife and three minor children of the petitioner had filed a petition under Section 125 of Cr.P.C., in which, vide order dated 05.12.2015, the petitioner was directed to pay an amount of Rs.4500/- per month to them as maintenance allowance from the date of filing of the petition. It is further submitted that since, the same amount could not be

paid, thus, wife and minor children of the petitioner had filed execution petition bearing No.238 of 2019 (Annexure P-4) and during the said proceedings, the petitioner did not appear and was declared as proclaimed person vide order dated 12.05.2022 passed by the Principal Judge, Family Court, Nuh and the said Judge had directed the SHO concerned to register an FIR under Section 174-A of the IPC and in pursuance of the said order, the present FIR has been registered under Section 174-A of the IPC on 29.05.2022. It is contended that after registration of the said FIR, the petitioner had appeared in the execution proceedings and had fully satisfied the claim of the decree holders/wife and children of the petitioner and the said fact is apparent from order dated 16.07.2022 (Annexure P-5). It is further contended that the petitioner also undertakes to comply with order dated 05.12.2015 and to pay the maintenance allowance amounting to Rs.4500/- per month in future. It is argued that in view of the same, the present FIR in question deserves to be quashed.

On the other hand, learned State Counsel has opposed the present petition and has submitted that FIR has been rightly registered in pursuance of order dated 12.05.2022 in execution proceedings against the petitioner.

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 coordinate 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.

In the present case, it is not in dispute that wife and minor children of the petitioner had filed a petition under Section 125 of Cr.P.C. in which, vide order dated 05.12.2015, the Judicial Magistrate Ist Class, Mewat had directed the petitioner to pay an amount of Rs.4500/- per month as maintenance allowance. The Execution Petition bearing No.238 of 2019 was filed by the abovesaid wife and minor children of the petitioner and in the said proceedings, the petitioner did not appear and accordingly, vide order dated 12.05.2022, the petitioner was declared as proclaimed person and direction was given to the SHO concerned to register an FIR and in pursuance of the said order, the present FIR has been registered on 29.05.2022. A perusal of order dated 16.07.2022 (Annexure P-5) would show that in the said execution proceedings, the decree holder appeared and stated that the entire maintenance amount of Rs.62,000/- has been received and statement was also recorded that the execution stands fully satisfied and accordingly, the same was disposed of as having been fully satisfied. The petitioner has also undertaken to comply with the order dated 05.12.2015 and to pay the maintenance allowance amounting to Rs.4500/- per month till the time the said order is in operation. The law laid down by the Coordinate Bench of this Court in the abovesaid judgments would also apply in the present case. Moreover, in the present case, the petitioner has also joined the proceedings in the execution petition.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and FIR No.152 dated 29.05.2022 registered under Section 174-A of the IPC at Police Station City Nuh, District Nuh and

all the subsequent proceedings arising therefrom are quashed subject to the petitioner depositing an amount of Rs.10,000/- with the Principal Judge, Family Court, Nuh within a period of three weeks from today and also subject to the condition that the petitioner would also comply with the order dated 05.12.2015 and pay the maintenance allowance amounting to Rs.4500/- per month to the applicants in petition under Section 125 of Cr.P.C. till the time the said order is in operation

The petitioner is directed to deposit an amount of Rs.10,000/- with the Principal Judge, Family Court, Nuh, within a period of three weeks from today and the said Court is directed to issue notice to the wife of the petitioner namely Sahina and to release the said amount to her.

It is made clear that in case, the said amount is not deposited within the aforesaid stipulated period and the abovesaid conditions are not complied with, then the present petition would be deemed to have been dismissed.

03.08.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**