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

CRM-M-35575-2022

Date of decision : 24.08.2022

Rupan Ahluwalia

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gaurav Mohunta, 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.351 dated 06.02.2020 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 as well as all the subsequent proceedings arising therefrom, as the main complaint filed under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (hereafter to be referred as “the Act of 1881”) has already been withdrawn by the complainant.

Learned counsel for the petitioner has submitted that in the present case, a complaint under Sections 138/141/142 of the Act of 1881 was filed by M/s India Infoline Housing Finance-complainant against the present petitioner and one another accused and in the said case, the petitioner was never served and was illegally declared as proclaimed person vide order dated 10.09.2019 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Gurugram and the said Judicial Magistrate Ist Class, had also 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further submitted that now the matter has been compromised and the complainant-M/s India Infoline Housing Finance has withdrawn its complaint filed under Sections 138/141/142 of the Act of 1881 vide order dated 23.10.2019 (Annexure P-4). It is contended that the petitioner had applied for the concession of anticipatory bail in the proceedings under Section 174-A of the IPC and was granted the same vide order dated 24.12.2020 (Annexure P-2). It is further contended that once the complaint filed under Sections 138/141/142 of the Act of 1881 itself is withdrawn, thus, keeping the proceedings under Section 174-A of the IPC alive would be an abuse of process of law.

On the other hand, learned State Counsel has opposed the present petition and has submitted that FIR has been registered in accordance with law inasmuch as the petitioner was declared as proclaimed person vide order dated 10.09.2019 and the Judicial Magistrate Ist Class, Gurugram had directed the SHO concerned to register an FIR thus, no ground is made out for quashing of 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, a complaint under

Sections 138/141/142 of the Act of 1881 was filed by M/s India Infoline Housing Finance-complainant against the present petitioner and one another accused and it is the case of the petitioner that he was never served and was illegally declared as proclaimed person vide order dated 10.09.2019. A perusal of order dated 10.09.2019 would show that the SHO concerned was directed to register an FIR under Section 174-A of the IPC and in pursuance of the same, FIR in question has been registered under 174-A of the IPC. A perusal of order dated 23.10.2019 (Annexure P-4) would show that in the complaint filed under Sections 138/141/142 of the Act of 1881, a compromise has been effected and the complainant has withdrawn the said complaint after stating that the payment with respect to cheque has been made. The petitioner has also been granted the concession of anticipatory bail in the proceedings under Section 174-A of the IPC vide order dated 24.12.2020 (Annexure P-2). Since, the complaint filed under Sections 138/141/142 of the Act of 1881 itself has been withdrawn, thus, keeping the impugned FIR under Section 174-A of the IPC alive would be an abuse of process of law.

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.351 dated 06.02.2020 registered under Section 174-A of the IPC at Police Station Shivaji Nagar, District Gurugram as well as all the subsequent proceedings arising therefrom are quashed/set aside.

24.08.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**