

CRM-M-37438 of 2022

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

CRM-M-37438 of 2022
Date of Decision: 24.08.2022

Bhagirath

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Jai Singh Yadav, Advocate, for the petitioner.
Mr. Tanuj Sharma, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

Prayer in this petition under Section 482 Cr.P.C. is for quashing the order of proclamation proceedings under Section 82 Cr.P.C. dated 20.05.2019 (Annexure P-10) against the petitioner and FIR No.1290 dated 17.07.2019 registered under Section 174-A IPC at Police Station Shivaji Nagar, District Gurugram.

Brief facts of the case are that the complainant-respondent No.2 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') against the petitioner with the allegations that petitioner had issued cheque No.809610 dated 17.03.2017 of ₹101610/- in favour of respondent No.2-complainant in discharge of his liability. The said cheque on presentation to the banker of the petitioner was received back with the remarks "Funds Insufficient". Respondent No.2 served a legal notice for demanding the cheque amount, which was not received back served or otherwise. Hence, respondent No.2 filed complaint under Section 138 of the N.I. Act against the

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petitioner.

Learned counsel for the petitioner has argued that after the complaint was filed, the petitioner was never served with the summons. As per record, said summons have been wrongly issued in the name of Bhagirath Sukhbir Singh resident of H. No.234, Khandsa, Gurugram, instead of in the name of the petitioner i.e. Bhagirath son of Sukhbir Singh resident of H. No.234/1, Sultan Patti. Learned counsel for the petitioner has, thus, further argued that at no point of time, the service of the petitioner was effected at the ordinary place of residence, therefore, the impugned order declaring the petitioner as proclaimed person was without following the procedure prescribed under Sections 82/83 Cr.P.C.

Learned counsel for the petitioner has lastly argued that as and when petitioner came to know about the abovestated proceedings, he made the entire payment to respondent No.2-complainant. Therefore, the complainant has withdrawn the complaint on 16.10.2019 by making a statement that the matter stands compromised. In view of compromise between the parties, petitioner has been granted anticipatory bail by the trial Court in the aforesaid FIR vide order dated 18.10.2019. Learned counsel has relied upon the decisions rendered by this Court in ***“Vikas Sharma vs. Gurpreet Singh Kohli and another”, 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

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settlement between the parties, therefore, continuation of proceedings under Section 174-A of IPC shall be nothing but an abuse of the process of law.

After hearing the learned counsel for the petitioner as well as learned State counsel and in view of the judgment passed in ***Vikas Sharma's*** case (supra), considering the fact that the complaint filed under Section 138 of the N.I. Act was compromised and later on the same was withdrawn on 16.10.2019, I find merit in present petition as the petitioner has also shown a bona fide cause for non-appearance before the trial Court. The service was not effected at the ordinary place of residence of the petitioner and he was not aware of the said fact and immediately, on coming to know about the said order, he compromised the case with the complainant and the complaint under Section 138 of the Act was withdrawn later on.

In view of the above, I find merit in the petition and accordingly, the present petition is allowed and the impugned order dated 20.05.2019 passed by trial Court as well as FIR No.1290 dated 17.07.2019 registered under Section 174-A IPC at Police Station Shivaji Nagar, District Gurugram, and all other subsequent proceedings arising thereof, are hereby quashed.

August 24, 2022
R.S.

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No