

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(266)

CRM-M-42551-2021(O&M)
Date of Decision:-19.04.2022

Varinder Kumar @ Virender Kumar

.....Petitioner

Versus

State of Haryana & another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Akashdeep Miglani, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing/setting aside the impugned order 02.07.2021 (Annexure P-4) passed by learned Judicial Magistrate, 1st Class, Tehsil Guhla, District Kaithal vide which the petitioner was declared as proclaimed person in Criminal Complaint No.NI Act 24/2016 dated 03.02.2016 (Annexure P-1).

The learned counsel for the petitioner has submitted that respondent No.2 namely, Rajesh Kumar filed a complaint under Section 138 NI Act in the learned trial Court wherein, he alleged that the petitioner/accused had received Rs.4 lakhs from him i.e. complainant in the year 2014 on the pretext of getting employment for him in a foreign country. He further alleged that when he was unable to send the complainant abroad in order to discharge his liability, (return the money) the petitioner issued cheque bearing No.000017 dated 16.09.2015 for the sum of Rs.2 lakhs of Bank of India, Branch Fatehgarh Sahib that the cheque was dishonoured due to insufficient funds in the account of the drawer. It was also submitted that the petitioner was declared as a proclaimed person vide order dated 03.02.2016 passed by the learned Judicial Magistrate, 1st Class, Guhla in proceedings

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under Section 138 NI Act. It is submitted that the petitioner was never served in the said proceedings and learnt about the said proceedings after the police was raiding the house of the petitioner as he has been declared as proclaimed person. On learning about the same, the petitioner compromised the matter with the complainant/respondent No.2 and in view of the compromise, the proceedings under Section 138 of the Act of 1881 were withdrawn. He has further submitted that the matter has already been compromised and the complainant has appeared before the learned Additional Civil Judge (Sr. Division)-cum-Presiding Officer, National Lok Adalat, Guhla and made a statement, whereupon the complaint in question has been permitted to be withdrawn.

The learned counsel for the complainant/respondent No.2 has not disputed the facts as stated by learned counsel for the petitioner and has further submitted that proceedings under Section 138 of the Act of 1881 have already been withdrawn and the matter has been compromised. The learned counsel for the complainant/respondent has also stated that he has no objection in case the present FIR and all subsequent proceedings arising therefrom are quashed.

The learned State counsel has opposed the present petition and has submitted that the complaint has been correctly registered.

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

From the above-said facts and circumstances, it is apparent that the present FIR was registered in view of the fact that the petitioner was declared as proclaimed person in the proceeding under Section 138 of the Act of 1881. The impugned complaint under Section 138 of the Act of 1881 itself has been withdrawn.

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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 IPC in view of the order passed in proceedings under Section 138 of the Act, 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 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.

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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 the proceedings under Section 138 NI Act have culminated in a settlement with the withdrawal of the complaint under Section 138 NI Act.

In view of the above, the present petition is allowed and the order dated 02.07.2021 (Annexure P-4) passed by learned Judicial Magistrate, 1st Class, Tehsil Guhla, District Kaithal, declaring the petitioner as proclaimed person is quashed.

(JASJIT SINGH BEDI)
JUDGE

19.04.2022

Jitesh

Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No