

**CRM-M-42531-2021 AND
CRM-M-42542-2021**

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

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**CRM-M-42531-2021
Decided on : 02.03.2022**

Avinesh Rana

. . . Petitioner

Versus

State of Haryana and another

. . . Respondents

CRM-M-42542-2021

Avinesh Rana

. . . Petitioner

Versus

Shiv Kumar

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

(Through Video Conferencing)

PRESENT: Mr. Vishal Aggarwal, Advocate
for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Rakesh Dhiman, Advocate
for the respondent-Shiv Kumar.

VIKAS BAHL, J. (Oral)

This order shall dispose of two criminal miscellaneous
petitions filed by the same petitioner.

CRM-M-42531-2021 has been filed under Section 482 of
the Code of Criminal Procedure for quashing of FIR No. 598 dated
12.09.2021 under Section 174-A of the Indian Penal Code registered at
Police Station Shivaji Nagar, District Gurugram.

CRM-M-42542-2021 has been filed by the petitioner under Section 482 of the Code of Criminal Procedure for quashing of criminal complaint No. 640 of 2012 dated 19.09.2012 (Annexure P-1) under Section 138 of the Negotiable Instruments Act, 1881 and subsequent summoning order dated 19.09.2012 (Annexure P-3) as well as order dated 06.11.2013 (Annexure P-5) declaring him as proclaimed person.

The counsel for the petitioner and respondents are *ad idem* that the dispute in both the cases is intertwined and have prayed that both the cases be taken up together and CRM-M-42531-2021 be taken up as the lead case.

In view of the same, CRM-M-42531-2021 is being taken up as the lead case.

Learned counsel for the petitioner has submitted that the respondent Shiv Kumar had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 IPC, 1860, for the dishonor of cheque amounting to Rs.1,15,000/- dated 26.03.2012 and in the said proceedings, the petitioner was never duly served and vide order dated 06.11.2013, the petitioner was declared as proclaimed person and the SHO of the Police Station concerned was directed to initiate proceedings under Section 174-A IPC and in pursuance of the said order, the FIR No. 598 dated 12.09.2021 under Section 174-A IPC was registered. He has further argued that in the present case, apart from the fact that the petitioner was never duly served, the matter has been

finally settled and the respondent has given an affidavit to the effect that he has no objection in case the present petition is allowed.

Learned counsel appearing for the respondent- Shiv Kumar has also reiterated the fact that the matter has been compromised and the amount due has been duly paid and thus, prays that both the petitions be allowed.

Learned State counsel appearing in CRM-M-42531-2021 has submitted that the primary issue which is to be seen in the proceedings under Section 174-A IPC is whether the petitioner has been served or not and merely the fact that a compromise has been effected, it will not entitle the petitioner seek quashing of the FIR.

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

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 considerations 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, respondent No. 2 had filed a complaint

under Section 138 of the Negotiable Instruments Act, 1881 for the dishonor of the cheque dated 26.03.2012 for an amount of Rs.1,15,000/. The petitioner was not duly served as is apparent from the report (Annexure P-4) in which it has been stated that the petitioner had vacated the government quarter where he was residing more than a year ago from that date. The petitioner was declared as proclaimed person vide order dated 06.11.2013 and the Judicial Magistrate 1st Class, Gurgaon while passing the said order had also directed the registration of the present FIR under Section 174-A IPC. The matter has now been amicable settled and respondent No. 2 has given a specific affidavit to the effect that he has no objection in case both the said petitions are allowed. The said affidavit is taken on record as Mark-A.

The relevant portion of the said affidavit is reproduced hereinbelow:-

“AVINESH RANA V/S SHIV KUMAR

AFFIDAVIT

I, SHIV KUMAR age 47 years S/O JAI DAYAL R/O

176/9, NEAR PARNAMI BHAWAN, SHIV PURI

GURUGRAM do here by solemnly affirm as under :

- 1. That the above noted case is pending before this Hon'ble Court which is now fixed on dated 03.03.2022.*
- 2. That the case is arising of Section 138 NI act and the cheque amount Rs.1,15,000/- there after the accused / petitioner Avinesh Rana S/o Atma Ram has been declared PO.*

3. That the petitioner /accused has filed the two petition CRM-M-42542-2021 and CRM-M-42531-2021 Title Avinesh Rana Vs Shiv Kumar and Avinesh Vs State and Avinesh Vs State where in a compromise has been arrived where in accused/ petitioner is ready to return the cheque amount of Rs.1,15,000/- beside giving the lumpsum interest amount of Rs.75,000/-. against the interest part.

4. Thus the compromise is being affected between the parties at Rs.1,90,000/-.

5. That respondent No 2/ complainant has no objection if the above mention petition is allowed.

Deponent

Verification :- It is verified that the contents of the above said affidavit are true and correct and nothing has been concealed

Deponent”

Since, the matter has been compromised and respondent- Shiv Kumar does not want to proceed further in the proceedings under Section 138 of the Negotiable Instruments Act, 1881, thus, continuation of the proceedings in the FIR under Section 174-A IPC would also be an abuse of the process of Court and the law laid down in the abovesaid judgements would squarely apply to the present matters.

Keeping in view the abovesaid facts and circumstances, both the petitions are allowed and FIR No. 598 dated 12.09.2021 under Section 174-A of the Indian Penal Code registered at Police Station Shivaji Nagar, District Gurugram and all subsequent proceedings

arising therefrom are quashed as well as criminal complaint No. 640 dated 19.09.2012 and the summoning order dated 19.09.2012 and also the order dated 06.11.2013 and all subsequent proceedings arising therefrom are also quashed qua the petitioner.

(VIKAS BAHL)
JUDGE

March 2nd, 2022
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No