

272 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-40763-2022

DECIDED ON: 7th DECEMBER, 2022

NITIN AGGARWAL

PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. M.S. Chauhan, Advocate
for the petitioner.

Mr. P.K. Aggarwal, DAG, Haryana.

Mr. Kartar Singh, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J (ORAL)

Prayer in the present petition is for quashing of order dated 12.02.2018 (Annexure P-4) passed by Judicial Magistrate Ist Class, Faridabad, whereby petitioner has been declared as proclaimed person in complaint No.NACT/2136/2017, dated 06.05.2017, titled "Smt. Manju Aggarwal versus Nitin Aggarwal" with a further prayer of quashing of FIR No. 371, dated 07.04.2018 (Annexure P-5), under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Faridabad Central, Faridabad with all consequential proceedings arising therefrom on the basis of settlement/compromise dated 25.02.2020 (Annexure P-6).

Learned counsel for the petitioner has submitted that in the present case, a complaint was filed by Manju Aggarwal against the

petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and in the said complaint, the petitioner was declared as proclaimed person vide order dated 12.02.2018 (Annexure P-4) and in the said order, direction was given to the SHO concerned for initiation of proceedings under Section 174-A of the IPC and accordingly, the FIR in question (Annexure P-5) was registered on 07.04.2018 under Section 174-A of the IPC.

Learned counsel for the petitioner has further submitted that complaint filed under Section 138 of the Act of 1881 was dismissed as withdrawn and direction was issued to release the accused from custody forthwith in the present complaint, if not required in any other case.

Learned counsel for the petitioner has placed reliance upon the orders dated 20.07.2022 and 24.08.2022 respectively, passed by a co-ordinate Bench of this Court in CRM-M-46062-2017, titled as “***Jatin Dhawan and another versus State of Haryana and another***” and CRM-M-12534-2022, titled as “***Krishan Kumar versus State of Haryana and another***”, wherein it has been held that once the main case is dismissed as withdrawn the continuation of proceedings under Section 174-A IPC shall be an abuse of process of law.

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 174-A 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 the complaint under Section 138 of the Act of 1881 has been dismissed as withdrawn. Once the impugned complaint has been dismissed as withdrawn and all the accused stands acquitted, then the continuance of the prosecution in the FIR under Section 174-A of IPC would be an abuse of the process of Court.

Keeping in view the above-said facts and circumstances, the present petition is allowed and the order dated 12.02.2018 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Faridabad, whereby the petitioner had been declared as proclaimed person and FIR No. 371, dated 07.04.2018 (Annexure P-5) registered under Section 174-A IPC at Police Station Faridabad Central, Faridabad with all the subsequent proceedings arising therefrom, are hereby quashed qua the petitioner.

SANDEEP MOUDGIL
JUDGE

7th DECEMBER, 2022.
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