

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

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CRM-M-35352-2019

Date of Decision : **August 18, 2022**

AZAD SINGH AND ANOTHER

.....Petitioners

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Ajay Ghangas, Advocate
for the petitioners.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

Mr. Ketan Antil, Advocate
for respondent No.2.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 0171 dated 31.5.2019 under Section 174-A IPC registered at Police Station Rohtak Civil Lines, Rohtak as well as for setting aside the order dated 24.10.2017 passed by learned Judicial Magistrate 1st Class, Rohtak vide which the petitioners were declared as a proclaimed persons.

The learned counsel for the petitioners has submitted that it is a case where a complaint was instituted by respondent No.2 against the present petitioners under Section 138 of the Negotiable Instruments Act in which summoning order was issued against the petitioners but the petitioners were never served. He referred to Annexure P-3 whereby after the summoning, an order was passed by the learned Judicial

Magistrate 1st Class, Rohtak on 31.5.2016 whereby it was observed that the accused had been duly served and despite service they did not appear and non-bailable warrants had been issued. The learned counsel submitted that the said order was incorrect on facts and has referred to the report of the process server which is annexed as Annexure P-5 to show that the report which was given by him was that he visited the given address where it came to notice by the owner of the house that no person of this name lived in this house and, therefore, service of bailable warrants could not be effected and, therefore, the order dated 31.5.2016 was factually incorrect on facts. He submitted that thereafter the petitioners were never served and on 24.10.2017 they were declared as a proclaimed persons. The learned counsel has further argued that even the provisions of Section 82 Cr.P.C. were not complied with and in this regard he referred to Annexure P-10 to contend that the proclamation was pasted at the house of the petitioners where they were not even residing and it was pasted on 21.9.2017 and for appearance of the petitioners on 25.9.2017 which is a difference of only 4 days and, therefore, it was violative of Section 82 of Cr.P.C. He submitted that in this way the petitioners were not in the knowledge of the present complaint and also the proclamation proceedings but it was thereafter when they were declared as a proclaimed persons it came to their knowledge and immediately the matter was got settled with respondent No.2 since the matter was only pertaining to Section 138 of the Negotiable Instruments Act. He further submitted that thereafter the matter referred to the Lok Adalat and vide Annexure P-9, the entire matter was settled with

respondent No.2-complainant and his complaint under Section 138 of the Negotiable Instruments Act was dismissed as withdrawn. He submitted that during the aforesaid period after the petitioners were declared as a proclaimed persons, FIR under Section 174-A IPC was lodged against the petitioners and thereafter, the proceedings have commenced in the aforesaid FIR.

He further submitted that once the order of declaring the petitioners as a proclaimed persons are illegal and violative of Section 82 of Cr.P.C. and apart from the fact that the subject matter of the dispute has already been resolved between the parties amicably and the complaint itself has been dismissed as withdrawn and no useful purpose will be served if the proceedings under Section 174-A IPC are carried on and has, therefore, prayed that the order declaring the petitioners as a proclaimed persons as well as proceedings under Section 174-A IPC be quashed.

On the other hand, the learned State counsel has stated that as per the record the matter appears to have been compromised between the parties and since the matter pertains to financial dispute between the petitioners and respondent No.2, the State would have no role to play in the aforesaid case.

The learned counsel for the respondent No.2 has stated that it is correct that the complaint under Section 138 of the Negotiable Instruments Act has since been withdrawn since the matter has been compromised between the parties and the amount has been paid. He submitted that he has no objection in case the proceedings under Section

174-A IPC and the order declaring the petitioners as a proclaimed persons are set-aside by this Court.

I have heard the learned counsels for the parties.

In the present case, the petitioners were declared as a proclaimed persons and the perusal of the order passed by the learned Judicial Magistrate 1st Class, Rohtak dated 31.5.2016 would show that it has been observed that the bailable warrants issued against the petitioners were received back duly served whereas the learned counsel for the petitioners has referred to Annexure P-5 to show that it is the report of the process server that no body was served since the petitioners were not residing in that house. Apart from the same, the proclamation was pasted at the house of the petitioners and the next date fixed for appearance was after 4 days only. In view of the aforesaid position, this Court is of the view that so far as the order declaring the petitioners as a proclaimed persons, the same cannot be sustained. So far as the proceedings under Section 174-A IPC are concerned, the matter has since been compromised between the parties since the subject matter pertains to Section 138 of the Negotiable Instruments Act and the learned counsel for the petitioners has also relied upon the judgment of co-ordinate Bench of this Court in **Ranbir Singh Vs. State of Haryana and another, 2021(3) R.C.R. (Criminal) 81** and has contended that in order to secure the ends of justice considering the facts and circumstances of the present case the further proceedings under Section 174-A IPC are liable to be quashed.

This Court is of the view that the subject matter of the present case pertains to Section 138 of the Negotiable Instruments Act

since the matter has been amicably compromised between the parties and the complaint itself has been withdrawn by the complainant and the order declaring the petitioners to be a proclaimed persons is also not sustainable in view of the aforesaid facts and circumstances. Therefore, it is held that the order dated 24.10.2017 vide which the petitioners were declared as a proclaimed persons are, hereby, set-aside. FIR No. 0171 dated 31.5.2019 under Section 174-A IPC registered at Police Station Rohtak Civil Lines, Rohtak is quashed. The further proceedings under Section 174-A IPC are also set-aside qua the petitioners in order to secure the ends of justice.

Allowed.

(JASGURPREET SINGH PURI)
JUDGE

August 18, 2022

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No