

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-46701-2021

Date of decision : 28.02.2022

Rakesh Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Munish Behl, Advocate
for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

Mr.Neeraj Goel, Advocate
for respondent no.2.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of FIR no.172 dated 11.10.2021 registered under Section 174-A IPC at Police Station Sector 9, Ambala City, District Ambala and subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that respondent no.2 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short "N.I. Act") in which the petitioner was never duly served and was wrongly declared as proclaimed person vide order dated 15.06.2021 (Annexure P-11) and the Judicial Magistrate Ist Class, Ambala vide the said order had also directed the SHO concerned to get the FIR registered under Section 174-A IPC and in pursuance of the said

order, the present FIR was got registered. It has further been submitted that when the petitioner learnt about the said proceedings, the petitioner applied for bail and vide order dated 06.10.2021, the petitioner was granted bail in the case under Section 138 of the N.I. Act. Thereafter the petitioner approached this Court by raising a plea that the petitioner had not been duly served and the order declaring the petitioner as proclaimed person as well as registration of the FIR was illegal and against law. It has further been submitted that during the pendency of the present case, the petitioner has paid the entire amount and the matter has been finally settled.

Learned counsel for respondent no.2 has submitted that the entire money has been paid and there is nothing due towards the petitioner and respondent no.2 has no objection in case the present petition is allowed and the impugned FIR is quashed.

Learned State counsel has opposed the present petition and has submitted that the FIR has been registered on account of the directions given by the Judicial Magistrate Ist Class vide order dated 15.06.2021 and perusal of the order dated 15.06.2021 would show that the petitioner was declared as proclaimed person in the proceedings under Section 138 N.I. Act and thus, the FIR has been rightly registered by respondent no.1.

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

It is not in dispute that in the present case the FIR in question has been registered in view of the order passed by the Judicial Magistrate Ist Class, Ambala, dated 15.06.2021 vide which the petitioner has been declared as proclaimed person in the complaint instituted by respondent no.2 under Section 138 of the N.I. Act. The petitioner has appeared in the

said proceedings under Section 138 of the N.I. Act as is apparent from the order dated 06.10.2021 (Annexure P-13). A perusal of the zimni orders would show that the petitioner was never duly served in the said proceedings under Section 138 of the N.I. Act. It is further common case of the petitioner and respondent no.2 that the entire amount which was due to the petitioner has already been paid and the receipt regarding payment having been made, has been produced which is taken on record as Mark A. The said receipt is reproduced hereinbelow:-

“ I, Pavinder Pal son of Shri Krishan Lal, Resident of H.No.1330, Sector 9, Ambala City, Haryana has received full payment from Shri Rakesh Kumar son of Shri Ram Lubhaya resident of H.No.2184/10, Raj Vihar, Baldev Nagar, Ambala City in view of compromise effected and executed between both the parties. Pavinder Pal has no objection if the complaint or any other proceedings are quashed.

Dated: 25.02.2022.

Sd/-

Place: Ambala City (PAVINDER PAL)”

Learned counsel for respondent no.2 has stated that he has no objection in case the present petition is allowed and the FIR in question is quashed.

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 in the proceedings therein, 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 compromised, the continuation of proceedings under Section 174-A IPC is

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.

Keeping in view the above said facts and circumstances moreso, the fact that the parties have finally settled the dispute in the proceedings under Section 138 of the N.I. Act and the petitioner has already appeared in the proceedings under Section 138 of the N.I. Act and has been granted bail vide order dated 06.10.2021 and also the fact that the petitioner was not duly served in the proceedings under Section 138 of the N.I. Act and respondent no.2 has stated that he has no objection in case the present petition is allowed and the FIR in question is quashed, the present petition is allowed and the FIR no.172 dated 11.10.2021 registered under Section 174-A IPC at Police Station Sector 9, Ambala City, District Ambala and subsequent proceedings arising therefrom are quashed.

(VIKAS BAHL)
JUDGE

February 28, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No