

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

Sr. No.125

CRM-M-44769-2022

Date of decision : 28.9.2022

Jagjit Singh

.....Petitioner(s)

VERSUS

State Bank of India

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Dinesh Nagar, Advocate for the petitioner

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed for setting aside the order dated 27.11.2019 (Annexure P-2) passed by learned Judicial Magistrate, 1st Class, SBS Nagar whereby the petitioner was declared as proclaimed person in a complaint case No.NACT/490/2017, titled as 'SBI vs. Jagjit Singh' under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

Learned counsel for petitioner submits that the petitioner had raised a loan of Rs.20 lakhs as cash credit limit from the respondent-Bank on 8.11.2012. and further took a term loan of Rs.5 lakhs, which was to be paid in monthly installemnts. In discharge of his liability, a cheque issued by him in favour of the respondent-Bank was dishonoured on the ground of insufficient funds, consequent to which, a complaint under Section 138 NI act was filed by the respondent-Bank. On non-appearance of the petitioner, he was ordered to be declared as a proclaimed person vide impugned order

dated 27.11.2019.

Learned counsel submits that a settlement had arrived at between the petitioner and the respondent-Bank, pursuant to which, the entire amount was paid by the petitioner and that in view of the same, the complain was withdrawn by making a statement before the Judicial Magistrate on 1.6.2022, whereafter, the complaint was permitted to be withdrawn vide order of even date, Annexure P3. He further submits that thereafter, the respondent -Bank has also issued a letter dated 8.6.2022, Annexure P4, whereby the lien in favour of the bank for an amount of Rs.25 lakh in the name of the petitioner was also cancelled. Consequent to the same, the property of the petitioner, which stood equitably mortgaged with the respondent-Bank has also been released.

Learned counsel further submits that the issuance of the proclamation was bad and that no actual service had been affected upon him. It is, thus, contended that non-appearance of the petitioner was not on account of any deliberate attempt to avoid appearance before the Court. Learned counsel further contended that failure to effect service upon the petitioner apart, the parties have also resolved their dispute and now there is no amount due against the petitioner.

Heard the learned counsel for the petitioner.

A Coordinate Bench of this Court in CRM-M-7354 of 2022, decided on 22.02.2022 titled as “**Prem Bansal Vs. State of Haryana & Another**” has held thus:-

'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. xxx xxx xxx 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. xxx xxx xxx 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 judgments would show that in a similar case where the FIR had been registered under Section 174-A of the IPC in view of the order passed in proceedings under Section 138 of the Act of 1881, while declaring the petitioner therein as proclaimed offender in the said proceedings, a Coordinate Bench after relying upon various judgments observed that once the main petition under Section 138 of the Act of 1881 stands withdrawn in view of an amicable settlement between the parties, the continuation of proceedings under Section 174-A of the 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 of the IPC.

A perusal of the same would show that where the substantive proceedings, wherein the order declaring the accused-petitioner as proclaimed person was passed, have already been amicably resolved amongst the parties, resulting in withdrawal of the complaint or the quashing of the proceedings, the FIR registered under Section 174-A IPC, as a result of certain interim order passed in criminal proceedings, have also been quashed. The object being to secure presence of an accused and to establish rule of law so that the proceedings could be finalized. Once the parent dispute stands amicably resolved, the proceedings initiated as a result of intermediary orders would not sub-serve any interest of justice. The proceedings under Section 138 of the Negotiable Instruments Act being quasi-criminal, the object is to resolve the dispute and when such object is served, the Court should adopt a liberal approach towards the accused who has already redressed the grievance of the complainant.

Thus, in view of the above, without going into the controversy as to whether the service was correctly and properly effected upon the petitioner in the instant case or not at this stage, and after noticing that the main case already stands settled in view of compromise executed between the parties and the complaint having been withdrawn, the impugned order is only an outcome of the proceeding held in the said compliant and would not serve any purpose by keeping the proceedings alive.

Accordingly, the petition is allowed. The order dated 27.11.2019 (Annexure P2) passed by learned Judicial Magistrate, 1st Class,

SBS Nagar whereby the petitioner was declared as proclaimed person in a complaint case No.NACT/490/2017, titled as ‘SBI vs. Jagjit Singh’ under Section 138 NI Act is set aside.

29.8.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No