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

CRM-M-44813-2022

Date of decision : 27.09.2022

Narayan Dass

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Satbir Singh Gill, Advocate for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.PC. for quashing of FIR No.691 dated 28.08.2022 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Sirsa City, District Sirsa and all the subsequent proceedings arising therefrom and also for quashing of order dated 08.08.2022 (Annexure P-3) passed by the Judicial Magistrate Ist Class, Sirsa in Complaint CIS No.NACT-899-2019 dated 20.07.2019, whereby which, the present petitioner has been declared as proclaimed person.

Learned counsel for the petitioner has submitted that in the present case, M/s Gopal Krishan and Brothers through its proprietor namely Gopal Krishan had filed a complaint under Section 138 of the Negotiable

Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) for dishonour of cheque dated 13.03.2016 amounting to Rs.15,000/- and in the said case, the petitioner was declared as proclaimed person vide order 08.08.2022 and vide same order, the Judicial Magistrate Ist Class, Sirsa had directed the police to take appropriate action in the same and accordingly, the present FIR under Section 174-A of the IPC was registered. It is further submitted that the matter has been compromised with the said Gopal Krishan and he has given an affidavit dated 06.09.2022 (Annexure P-5) on the said aspect and has even withdrawn the complaint filed under Section 138 of the Act of 1881 as is apparent from order dated 09.09.2022 (Annexure P-6) and has further given an undertaking that the present FIR be cancelled. It is contended that since, the proceedings under Section 138 of the Act of 1881 have been withdrawn thus, no purpose would be served by keeping the present FIR under Section 174-A of the IPC alive.

On the other hand, learned State Counsel has opposed the present petition and has submitted that FIR in question was registered in pursuance of order dated 08.08.2022 passed by the Judicial Magistrate Ist Class, Sirsa and the said order as well as registration of FIR are in accordance with law and thus, the present petition deserves to be dismissed.

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

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 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, a co-

ordinate 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 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 of the 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 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 was filed by M/s Gopal Krishan and Brothers, through its proprietor namely Gopal Krishan, with respect to dishnour of cheque dated 13.03.2016 amounting to Rs.15,000/-. In the said proceedings, the petitioner was declared as proclaimed person vide order dated 08.08.2022 and intimation was sent to the concerned SHO to take appropriate action and in pursuance of the same, FIR in question was registered on 28.08.2022 (Annexure P-4).

A perusal of order dated 09.09.2022 (Annexure P-6) would show that the complainant had appeared in the proceedings under Section 138 of the Act of 1881 and had made statement in writing that the present petitioner had paid the entire cheque amount alongwith compensation to him and he does not wish to proceed with the complaint against the present petitioner and in view of the said statement, complaint under Section 138 of the Act of 1881 has been withdrawn.

Learned counsel for the petitioner has also relied upon an affidavit dated 06.09.2022 and the undertaking submitted by the said Gopal Krishan to the effect that he has no objection in case the present FIR is quashed.

From the above facts, it is apparent that the proceedings under Section 138 of the Act of 1881 had been withdrawn and thus, order dated 08.08.2022 (Annexure P-3) has lost its effect and the continuance of FIR under Section 174-A of IPC would be an abuse of process of the Court.

Keeping in view the abovesaid facts and circumstances as well

as law laid down in the abovesaid judgments, the present petition is allowed and FIR No.691 dated 28.08.2022 registered under Section 174-A of the IPC at Police Station Sirsa City, District Sirsa and all the subsequent proceedings arising therefrom are quashed and order dated 08.08.2022 (Annexure P-3) passed by the Judicial Magistrate Ist Class, Sirsa, whereby, the petitioner has been declared as proclaimed person, is set aside.

In this case, notice has not been issued to respondent No.2 as the issuance of notice to respondent no.2 would only further delay the matter and respondent No.2 would also have to entail expenses in defending the present petition more so, when respondent No.2 has already compromised the matter and has withdrawn the complaint under Section 138 of the Act of 1881, as is apparent from order dated 09.09.2022. It would be open to respondent No.2 to move an application in the present case, in case, the averments made in the present petition are false.

27.09.2022
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**