

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46354-2022 (O & M)
Date of decision:31.10.2022

Sahab Singh Sidhu Petitioner

V/s

State of Haryana and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Shailender Singh Momi, Advocate,
for the petitioners.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana,

JASJIT SINGH BEDI, J. (Oral)

This is a petition under Section 482 of Cr.P.C. read with Section 483 Cr.P.C. for quashing/setting aside the order dated 19.12.2019 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Kaithal declaring the petitioner to be a proclaimed person in case bearing RBT No.1605 of 2018 (NACT No.693 of 2017 dated 10.07.2017) titled as “Kamal Filling Sttion & Another Vs. Sahab Singh Sidhu” (Annexure P-1) under Section 138/142 of the Negotiable Instruments Act and all other consequential proceedings arising therefrom as the matter has been compromised and the complainant withdrew his complaint under Section 138 of the Negotiable Instruments Act vide order dated 06.01.2020 (Annexure P-8).

2. The brief facts of the case are that a complaint under Section 138/142 of the Negotiable Instruments Act was instituted against the petitioner/accused at the instance of the complainant-respondent No.1-M/s

Kamal Filling Station through its Proprietor Bhim Singh as the petitioner-accused in discharge of his legal liability had issued a cheque bearing No.139778 dated 06.03.2017 for a sum of Rs.85,000/- from his account with Banker State Bank of India, Siwan, District Kaithal and the same came to be dishonoured by the Bank on account of "Funds Insufficient". Since the petitioner/accused did not appear before the Trial Court to face trial, he was declared as a proclaimed person as per the order dated 19.12.2019 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Kaithal .

3. Subsequently, the matter was compromised between the petitioner-accused and the complainant party, pursuant to which, the petitioner paid a sum of Rs.70,000/- to respondents No.2 and 3 (complainant). Thereafter, the counsel for the complainant appeared before the Court of Judicial Magistrate Ist Class, Kaithal and suffered a statement that the matter had been compromised between the parties and he had received an amount of Rs.70,000/- on behalf of the complainant. Therefore, the complaint, in question, was dismissed as withdrawn vide order dated 06.01.2020 (Annexure P-8). In view of the dismissal of the complaint under Section 138 of Negotiable Instruments Act on the basis of the compromise, the present petition for quashing of the impugned order dated 19.12.2019 (Annexure P-7) has been filed.

The learned counsel for the petitioner submits that the impugned order (Annexure P-7) came to be passed due to his (petitioner's) non-appearance in the aforementioned complaint. Thereafter, the matter was compromised between the parties and the petitioner-accused had made the payment of Rs.70,000/- to the complainant. On 06.01.2020, the

the Trial Court that since he had received a payment of Rs.70,000/-, therefore, he did not want to proceed further with the complaint and wanted to withdraw the same. Based on the said statement, the complaint was dismissed as withdrawn on 06.01.2020 (P-8).

The learned State counsel has opposed the present petition and has submitted that the impugned order (Annexure P-7) has been correctly passed.

This Court has heard the learned counsel for the petitioner and the learned State counsel and has perused the paper-book.

From the above-said facts and circumstances, it is apparent that the impugned order (Annexure P-7) was passed in view of the fact that the petitioner was declared as a proclaimed person in the proceeding under Section 138 of the Act of 1881. The impugned complaint under Section 138 of the Act of 1881 itself has been withdrawn.

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 (CrI.) 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, while declaring the petitioner therein as a proclaimed offender, a co-ordinate Bench after relying upon various judgments observed that once the main petition under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, the continuation of proceedings under Section 174-A 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 a proclaimed person as well as for quashing of the FIR under Section 174-A 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 IPC shall be an abuse of the process of court. A similar view has been expressed by this Court in “Anil Kumar Versus Jitender Kumar and another, CRM-M-5878-2022 decided on 06.04.2022”, “Anil Kumar Versus Jitender Kumar and another, CRM-M-5755-2022 decided on 06.04.2022” and “Varinder Kumar @ Virender Kumar Versus State of Haryana and another, CRM-M-42551-2021 decided on 19.04.2022”.

In the present case the proceedings under Section 138 NI Act

Therefore, the continuance of proceedings in furtherance of the impugned order would be an exercise in futility and as such the said order ought to be quashed in the interest of justice.

In view of the above, the present petition is allowed and the impugned order dated 19.12.2019 (Annexure P-7) passed by the Judicial Magistrate Ist Class, Kaithal and all consequential proceedings arising therefrom are hereby quashed qua the petitioner.

(JASJIT SINGH BEDI)
JUDGE

October 31, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No