

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

(123)

CRR-M-48535-2022

Date of decision : 31.10.2022

Rajinder Singh @ Leela

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chetan Kapoor, Advocate,
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a petition under Section 482 of Cr.P.C. for quashing of FIR No.44 dated 25.04.2022, under Section 174-A of IPC (Annexure P-7), registered at Police Station Ghanaur, District Patiala and all subsequent proceedings arising therefrom as well as for quashing the order dated 05.12.2019 (Annexure P-3) passed by the Judicial Magistrate 1st Class, Rajpura, whereby, the petitioner has been declared as a proclaimed offender in the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act of 1881').

Learned counsel for the petitioner has submitted that Harjinder Singh-respondent No.2 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short the 'NI Act') with respect to the

dishonor of a cheque of Rs.1,00,000/- and during the said proceedings, the petitioner was declared a proclaimed offender, vide order dated 05.12.2019 (Annexure P-3) and vide order dated 04.03.2022 (Annexure P-4), the concerned SHO was directed to register an FIR under Section 174-A IPC and in pursuance of the same, the present FIR has been registered. It is further submitted that when the petitioner learnt about the said proceedings under Section 138 NI Act, he has compromised the matter with said Harjinder Singh and said Harjinder Singh on 10.05.2022 had given a statement that he does not want to proceed with the complaint under Section 138 NI Act and accordingly, vide order dated 14.05.2022 (Annexure P-7), the said complaint under Section 138 NI Act was withdrawn. It is also submitted that in view of the same, the impugned FIR and impugned order deserve to be set aside.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that since the FIR has been registered in pursuance of order dated 04.03.2022 passed by the Judicial Magistrate 1st Class, Rajpura in the proceedings under Section 138 NI Act, thus, there is no ground to quash the same.

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 (Cr.) 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, declaring the petitioner therein as proclaimed offender in the said proceedings, 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 proclaimed person as well as 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.

In the present case, the statement dated 10.05.2022 (Annexure P-6) made by Harjinder Singh-respondent No.1 in the proceedings under Section 138 of the NI Act, is reproduced as under: -

“Statement of Sh. S.S. Kamboj, Adv. for the complainant.

I do not want to proceed further with the present complaint and withdraw the same.

R.O. & A.C.

*Jaspreet Singh
JMJC/Rajpura,
10.05.2022”*

The order dated 14.05.2022, passed in the said complaint under

Section 138 of the NI Act is reproduced as under: -

“HARJINDER SINGH VS RAJINDER SINGH @ LEELA etc.

Present: Sh. S.S. Kamboj, Adv, for the complainant.

File taken up today in National Lok Adalat. Statement of Ld counsel for the complainant has already been recorded.

Heard. In view of the statement suffered by the Ld counsel for the complainant, the present complaint is hereby dismissed as withdrawn today in the National Lok Adalat. File be consigned to record room.

Date of Order: 14.05.2022

*(Jaspreet Singh),
Presiding Officer,
National Lok Adalat,
(UID:PB0418”*

In the present case, the complaint under Section 138 of the Act of 1881 has been withdrawn. Once the impugned case has been withdrawn, then the continuance of the prosecution in the FIR under Section 174-A of IPC would be an abuse of the process of Court. Moreover, since the complaint under Section 138 NI Act has been withdrawn, thus, the order dated 05.12.2019 (P-3) declaring the petitioner as proclaimed person in the said proceedings also deserves to be aside.

Keeping in view the facts and circumstances as well as the authorities of law referred to above, the present petition is allowed and FIR No.44 dated 25.04.2022, registered under Section 174-A of IPC (Annexure P-7), registered at Police Station Ghanaur, District Patiala and all subsequent proceedings arising therefrom, are quashed and even the order dated 05.12.2019 (Annexure P-3) passed by the Judicial Magistrate 1st Class, Rajpura, whereby, the petitioner has been declared as a proclaimed offender, is also set aside.

No notice is being issued to respondent No.2, inasmuch as, after the order dated 04.03.2022 (P-4) was passed by the Judicial Magistrate

1st Class, Rajpura for registration of the FIR under Section 174-A, respondent No.2 has compromised the matter, which is apparent from the statement dated 10.05.2022 (P-3) as well as order dated 14.05.2022 (P-4) passed in the proceedings under Section 138 NI and had withdrawn the complaint under Section 138 NI Act. Moreover, in the present case, the FIR was registered on the order of the Court passed on 04.03.2022, thus, issuance of notice to respondent No.2 would only further delay the matter and would also require the respondent No.2 to entail unnecessary expenses to appear in the present case.

It is made clear that in case, respondent No.2 has any grievance, it would be open to respondent No.2 to move an application with respect of the same.

October 31, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No