

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

CRM-M-51645-2022

Date of Decision: 29.11.2022

ASHUTOSH VERMA

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Shvetanshu Goel, Advocate
and Mr. Shrey Goel, Advocate
for the petitioner.

Mr. Amrik Narwal, D.A.G., Haryana.

Mr. Vineet Sehgal, Advocate
for respondent No.2.

HARSH BUNGER, J.

Petitioner has filed this petition under Section 482 of Cr.P.C. for quashing of order dated 24.02.2020 (Annexure P-5) passed in NACT No.17857 of 2017 titled as “**IIFL vs Ashutosh**” by learned Judicial Magistrate Ist Class, Gurugram, whereby, he has been declared as a proclaimed offender. The petitioner further seeks quashing of FIR No.932 dated 26.03.2020 registered under Section 174-A of the Indian Penal Code, 1860 (here-in-after to be referred as ‘the IPC’) at Police Station Shivaji Nagar, Gurugram Haryana (Annexure P-6).

Succinctly, a loan facility was extended by respondent No.2- M/s India Infoline Housing Finance, in favour of wife of the petitioner/petitioner (Namrata Verma/Ashutosh Verma) vide loan Account No.720931. In discharge of the said loan liability, a Cheque bearing

No.334932 dated 09.09.2015, amounting to Rs.09,02,622/- drawn on 'Axis Bank Limited', VasantKunj Branch, New Delhi, was issued in favour of respondent No.2 by wife of the petitioner namely, NamrataVerma. Since, the said cheque bounced, accordingly, a complaint bearing NACT No.6480 of 2015 under Section 138 of the Negotiable Instruments Act was filed. Another cheque issued by the petitioner herein namely, Ashutosh Verma was also dishonoured and hence, another complaint bearing NACT No.17857 of 2017 was filed. It appears that subsequently, the matter was settled between the parties on certain terms and conditions, whereupon, the matter was taken up by the National Lok Adalat, Gurugram and an award dated 10.02.2018 (Annexure P-2) was passed in NACT No.6480 of 2015.

A perusal of the paper book further reveals that the settlement arrived at between the parties could not be honoured and accordingly, an amount of Rs.87,29,694/- was left to be paid.

Thereafter, another one time settlement (OTS) was arrived at between the parties vide letter dated 27.01.2022 (Annexure P-3), which reads as under :-

“IIFL HOME LOAN

Dated: 27.01.2022
Mr. Ashutosh Verma
M/s Ashutosh Verma and Associates
A-24, First Floor, Kailash Colony
New Delhi

Settlement letter for the Loan Account No.720931

Mortgaged Property Address :- Plot bearing no.C/3075 (Old
No.AG-8), Sector-C, Green
Fields, Faridabad, Haryana, Ind
121001

This is with reference to the captioned loan Account under which you have availed from us loan facilities by executing certain loan

documents thereby agreeing to repay the same in equated monthly instalment.

That, due to certain unavoidable circumstances you were unable to honor your commitment towards repayment of the Equated Monthly Installments (EMI) on their respective due dates. As a result of which the total outstanding amount along with bounce charges, Delay payment Charges, Legal Charges and foreclosure charges has occurred, as on 25 Jan 22, accumulated to the tune of Rs.87,29,694/- (Rupees Eighty Seven Lacs Twenty Nine Thousand Six Hundred Ninety Four Only)-(Forreclosure Amount is attached)

That, you have approached us and expressing your inability to repay the entire aforesaid amount, requested us for consideration of a waiver on the said amount.

That, having considered your request, we have, agreed to grant a waiver of Rs.47,29,694/- (Rupees Forty Seven Twenty Nine Thousand Six Hundred Ninety Four only) on the said total outstanding amount of Rs.87,29,694/- (Rupees Eighty Seven Lacs Twenty Nine Thousand Six Hundred Ninety Four only) and accordingly agreed to settle the said loan account for Rs.40,00,000/- (Rupees forty Lacs only), in subject to receipt and clearance of the same on or before 28 Feb 22.

SR. NO.	MODE OF PAYMENT	DETAILS OF THE PAYMENT	AMT. (RS.)
1.	RTGS	Date: 31 st Jan, 22	1,20,000/-
2.	Cheque/DD/RTGS	20 th February, 22	58,80,000/-
		Total Settlement Amount	40,00,000/-

That, time as the essence for the waiver granted and failure on your part in repayment of the said amount Rs.40,00,000/- (Rupees Forty Lacs Only): on or before 28 Feb 22, would render this settlement and waiver as invalid.

Upon realization of the entire payment, within the time mentioned above account will stand closed and the Company would also initiate steps for withdraw of legal case(s), if any, we will release the Original Property Documents within 15 working days from the date of payment received by us after getting the entire settlement amount.

Kindly also note that this is a one-time offer, and is without any prejudice to the rights of the Company under the Agreement(s) that have been executed between Mr. Ashutosh Verma and IIFL HOME FINANCE LTD.

Please sign a copy of this letter and acknowledge receipt as token of your confirmation and acceptance.

For IIFL Home finance Ltd.
Authorized Signatory.”

In compliance of said settlement, the settled amount was paid by the petitioner and the original property papers were returned to him on 31.03.2022, vide letter dated 09.06.2022 (Annexure P-4), which reads as under :-

“IIFL HOME LOAN

Date: 09/06/2022

MR. ASHUTOSH VERMA
M/S ASHUTOSH VERMA AND ASSOCIATES,
A-24 IST FLOOR KAILASH COLONY,
NEW DELHI, 110024, South Delhi,

Closure Cum Payment confirmation Letter for The Loan
Account No.720931

(Mortgaged Property Address: Plot bearing No.-C/-3075, (old
no.AG-8), Sector-C, Greenfields, Faridabad – Haryana, IND,
121001)

This is with reference to the captioned loan account under which you have availed from us loan facilities by executing certain loan documents thereby agreeing to repay the same in equated monthly installment, and you requested us for the settlement of the loan @ Rs.40.00 Lacs.

We have received the entire settlement amount of Rs.40,00,000/- (Rupees Forty Lacs Only) on 21st March’ 22 as per the settlement letter issued on 31st January’ 22 and the loan has been closed and we have released the Original Property Papers to you along with the co-applicant on 31st March’ 2022.

Please sign a copy of this letter and acknowledge receipt as token of your confirmation and acceptance.

Thanking you,

For IIFL Home Finance Ltd.

Authorized signatory”

It appears that in case bearing CIS No.17857 of 2017 titled as ***IIFL vs Ashutosh Verma***, the present petitioner namely, Ashutosh Verma was declared as a proclaimed offender vide order dated 24.02.2020 (Annexure P-5) and an intimation was sent to the Station House Officer concerned for lodging FIR under Section 174-A of the Indian Penal Code.

Consequently, FIR No.932 dated 26.03.2020 under Section 174-A of the Indian Penal Code was lodged at Police Station Shivaji Nagar, Gurugram (Annexure P-6). It is submitted that since the amount settled between the parties had been paid and the loan account stood closed and the property papers having been returned to the petitioner, accordingly, the complaint bearing NACT No.17857 of 2017 was withdrawn by respondent No.2 as per order dated 01.09.2022 (Annexure P-7), which is reproduced as under :-

“India Infoline vs. Ashutosh 17857/2017

Present:AR for complainant in person with Sh. Ashwini Tanwar, Advocate.

File taken up as an application for put up the case file for withdrawal of present complaint moved on behalf of complainant. Report of Ahlmad concerned is perused.

File received from the record room. Complaint be restored to its original number.

File put up in Daily Lok Adalat. AR for the complainant has made a statement that he does not want to proceed further with the present complaint on the instructions of complainant company and same may kindly be dismissed as withdrawn. His statement in this regard recorded separately. Heard. There are sufficient grounds to permit the complainant/AR for complainant/complainant counsel to withdraw this complaint against the accused.

Accordingly, present complaint is hereby dismissed as withdrawn. In view of Section 257 Cr.P.C. the accused is hereby acquitted in this case. The unexhibited original documents if any be returned to the concerned parties against proper receipt and identification, if desired. File be consigned to record room after due compliance.

*Announced in open court.
01.09.2022*

*(Vikash)
Judicial Magistrate First Class
Presiding Officer as Daily Lok Adalat
Gurugram/UID No.HR-0440”*

Learned counsel for the petitioner contends that the petitioner was declared as a proclaimed offender in proceedings under Section 138 of the Negotiable Instruments Act and consequent thereto, the instant FIR was lodged; however, since the said complaint has already been settled with the parties and the same stands withdrawn vide order dated 01.09.2022, accordingly, continuation of the proceedings in the instant case FIR, would not advance any interest of justice. Hence, the prayer is for quashing of FIR.

Learned State counsel raises no serious objection to the arguments raised by learned counsel for the petitioner. There is no denial or dispute regarding the amicable settlement between the parties and also the final order of withdrawal of the complaint.

Learned counsel for respondent No.2 has admitted the factum of settlement of dispute and submits that respondent No.2 has no objection, if the FIR in question is quashed.

I have heard the learned counsel for the parties and perused the paper book with their able assistance.

In order to appreciate the prayer in this case, it would be appropriate to refer to certain judicial precedents on this issue. 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.

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.”

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.”

This Court in another case bearing **CRM-M-14623-2021** titled as **“Deepak vs. State of Haryana and another”**, decided on **17.02.2022**, has held as under:-

“...Since, the proceedings under Section 138 of the Act of 1881 has been withdrawn and the present FIR has been registered on account of non-appearance of the petitioner, this Court feels that continuance of the proceedings in the present FIR would be an abuse of process of the Court.

Keeping in view the abovesaid facts and circumstances, as well as the authorities of law referred to above, the present petition is allowed and FIR No.969 dated 04.11.2018 registered under Section 174-A of IPC at Police Station Ballabgarh City, District Faridabad (Annexure P-3)

and all the consequential proceedings arising therefrom, are ordered to be quashed qua the petitioner...”

A perusal of the above referred judgments would manifest that where the substantive proceedings, wherein the order declaring the petitioner-accused as proclaimed person was passed, stand 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, has 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.

In the instant case also, the case FIR No.932 dated 26.03.2020 was lodged on account of petitioner having been declared as a proclaimed person in proceedings under Section 138 of the Negotiable Instruments Act, however, subsequently, the complaint under Section 138 of the Negotiable Instruments Act has been withdrawn on account of amicable settlement of dispute, thus continuing criminal proceedings in case FIR No.932 dated 26.03.2020 would be nothing but a misuse of process of law.

Accordingly, the instant petition is allowed and order dated 24.02.2020 (Annexure P-5) passed in NACT No.17857 of 2017 titled as “**IIFL vs Ashutosh**” by learned Judicial Magistrate Ist Class, Gurugram, whereby, he has been declared as a proclaimed offender, is set aside and FIR No.932 dated 26.03.2020 registered under Section 174-A of the Indian Penal Code, 1860 (here-in-after to be referred as ‘the IPC’) at Police Station Shivaji Nagar, Gurugram Haryana (Annexure P-6) along with all the consequential proceedings arising therefrom, are hereby quashed qua the

petitioner. However, the same would be subject to payment of costs of Rs.5,000/- to be deposited by the petitioner with ***Punjab and Haryana High Court Bar Clerks' Association, Chandigarh***, within one month from receipt of certified copy of this order.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

November 29, 2022
gurpreet

(HARSH BUNGER)
JUDGE

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