

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CRM-M-58643-2022
Decided on : 16.12.2022

Rahul Dureja and another

. . . Petitioners

Versus

State of Punjab and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Kunwar Rajan, Advocate
for the petitioners.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

VIKAS BAHL, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 161 dated 30.10.2017 under Section 174-A IPC registered at Police Station Kabarwala and all subsequent proceedings arising therefrom and also for setting aside the order dated 17.10.2017 vide which the petitioners were declared as proclaimed offenders in case titled as M/s Puran Chand Vs. M/s Dureja Rice Mills and others.

Learned counsel for the petitioners has submitted that a complaint under Section 138 of the Negotiable Instruments Act read with Section 420 IPC was filed by M/s Pooran Chand and Co. (HUF), Commission agents against the present petitioners and another accused and in the said case, the petitioners were never served and were illegally declared as proclaimed offenders vide the order dated 17.10.2017 and vide same order, the Sub Divisional Judicial Magistrate had directed the SHO concerned to register FIR under Section 174-A and in pursuance of the

same, the FIR in question had been registered. It is contended that the petitioners had appeared in the proceedings under Section 138 of the Negotiable Instruments Act and have been granted bail vide order dated 09.07.2021 (Annexure P-13) and have also been granted anticipatory bail vide order dated 30.06.2021 passed by the Additional Sessions Judge, Sri Muktsar Sahib in the FIR under Section 174-A. It is further submitted that the matter has been compromised and the complainant has withdrawn the complaint under Section 138 of the Negotiable Instruments Act and the said facts are apparent from the order dated 16.09.2022 (Annexure P-17). It is submitted that in view of the fact that the complaint under Section 138 of the NI Act has been withdrawn and the petitioners have appeared in the proceedings, the impugned FIR and order dated 17.10.2017 deserve to be quashed/set aside.

Learned State counsel appearing for respondent No. 1 has submitted that the FIR in question has been rightly registered in pursuance of the order dated 17.10.2017 passed by the SDJM and thus, the present petition deserves to be dismissed.

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 IPC in view of the order passed in proceedings under Section 138 of the Act, 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 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 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 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 abuse of the process of court.

In the present case, the petitioners were declared as proclaimed offenders in the proceedings under Section 138 of the NI Act and the present FIR was ordered to be registered on account of the fact that the petitioners had been declared as proclaimed offenders in the proceedings under Section 138 of the NI Act. It is further the case of the petitioner that he was never duly served. It is apparent from the record that the complaint filed under Section 138 of the NI Act has been withdrawn

vide order dated 16.09.2022 and thus, the proceedings under Section 138 of the NI Act stand withdrawn by the complainant on the ground that the matter has been compromised. The said order dated 16.09.2022 is annexed as Annexure P-17. Thus, keeping the proceedings under Section 174-A alive in such a situation would be an abuse of the process of the Court.

Keeping in view the abovesaid facts and circumstances as well as the law laid down in the abovesaid judgment, the present petition is allowed and FIR No. 161 dated 30.10.2017 under Section 174-A IPC registered at Police Station Kabarwala and all subsequent proceedings arising therefrom and also the order dated 17.10.2017 is set aside.

No notice is being issued to respondent No. 2 in the present case as a perusal of the order dated 16.09.2022 would clearly show that the complaint under Section 138 of the NI Act has already been withdrawn and respondent No. 2 is not the complainant in the impugned FIR as it was registered on the order of the Court and thus, issuance of notice to the respondent No. 2 would delay the proceedings and would unnecessarily entail expenses for respondent No. 2 to bear for appearing and pursuing the present case.

It is, however, made clear that in case, any averment made by the petitioner is incorrect, it would be open to respondent No. 2 to move an appropriate application.

(VIKAS BAHL)
JUDGE

16.12.2022
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No