

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-55991-2022
Date of decision : 02.12.2022

Sat Narian @ Satnarayan

... Petitioner

Versus

The Rohtak Central Co-op. Bank Ltd. and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Dr.Naresh Kaushik, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana
for respondent no.2.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of the order dated 29.10.2022 vide which the petitioner has declared as proclaimed person in private criminal complaint no.COMA 127 of 2016 dated 11.11.2016 titled as “RCCB vs. Satnarayan” under Section 138 of the Negotiable Instrument Act (in short “N.I. Act”) which was dismissed as withdrawn on 14.11.2022.

Learned counsel for the petitioner has submitted that in the present case, the complaint under Section 138 of the N.I. Act was filed by The Rohtak Central Co-op. Bank Ltd. Branch Office Meham, Tehsil Meham, District Rohtak through its Branch Manager and in the said case, the petitioner was never duly summoned and the petitioner was declared proclaimed person vide order dated 29.10.2022. It is submitted that the

the said proceedings then he had paid back the entire loan and also got a no dues certificate from the bank, a copy of which has been annexed as Annexure P-2. It is further submitted that the said bank had, in view of the compromise, withdrawn the complaint under Section 138 of the N.I. Act on 14.11.2022 and thus, the impugned order declaring the petitioner as proclaimed person deserves to be set aside on the said ground.

Learned State counsel has submitted that the order declaring the petitioner as proclaimed person has rightly been passed as he did not appear in the proceedings under Section 138 of the N.I. Act and thus, the present petition deserves to be dismissed.

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

A Coordinate 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 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 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 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 a 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.

The case of the petitioner is on a higher footing than the cases of the abovesaid two judgments inasmuch as in the present case the petitioner is seeking quashing of the order dated 29.10.2022 (Annexure P-8) vide which the petitioner was declared as proclaimed person in the complaint under Section 138 of the N.I. Act and the said complaint was withdrawn vide order dated 14.11.2022 (Annexure P-7). A perusal of the certificate (Annexure P-6) would also show that bank has already issued a no dues certificate stating that the petitioner has repaid the entire loan along with interest and nothing is due towards the petitioner. Since the main complaint under Section 138 of the N.I. Act has been withdrawn, thus, the order dated 29.10.2022 deserves to be set aside.

Keeping in view the above said facts and circumstances, the present petition is allowed and the order dated 29.10.2022 is set aside.

No notice is issued to respondent no.1-bank as the factum with respect to the complaint under Section 138 of the N.I. Act having been withdrawn is apparent from the order dated 14.11.2022 in which representative of the respondent-Bank had appeared with his counsel and

had withdrawn the complaint under Section 138 of the N.I. Act and even the certificate (Annexure P-6) would fortify the fact that the amount has been repaid, thus, issuance of notice to respondent no.1 would only further delay the proceedings and would also entail legal expenses to be incurred by respondent no.1 in pursuing the present case.

It is, however, made clear that in case any averments made in the present petition are factually incorrect, then it would be open to respondent no.1-bank to move an appropriate application.

(VIKAS BAHL)
JUDGE

December 02, 2022
Davinder Kumar

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