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

CRM-M-50171-2019 (O&M)

Date of Decision: 06.12.2022

KAMAL KISHORE

....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Arjun Singhrai, Advocate for
Mr. Kunal Dawar, Advocate
for the petitioner.

HARSH BUNGER, J. (Oral)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.348 dated 12.07.2018 registered under Section 174-A of the Indian Penal Code, 1860 (Annexure P-1) at Police Station Sadar Ballabgarh, District Faridabad, Haryana and all the consequential proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed by Ajit Singh (respondent No.2) against the present petitioner for dishonour of the cheque amounting to Rs.1,00,000/- and in the said proceedings, the petitioner was never served in accordance with law and was illegally declared as proclaimed person vide order dated 19.05.2018 (Annexure P-4) and an intimation was sent to concerned SHO by the Judicial Magistrate First Class, Faridabad with the direction to register the

FIR in respect of the same and in pursuance of the said intimation, the present FIR has been registered. It is submitted that upon coming to know about the pendency of complaint under Section 138 of Negotiable instruments Act, 1881, the petitioner immediately approached respondent No.2/complainant and settled the matter with him. Pursuant to the compromise, respondent No.2/complainant moved an application for withdrawal of the complaint on 08.11.2018 and such the said complaint bearing No.NACT/3192 of 2017 was dismissed as withdrawn, vide order dated 08.11.2019 (Annexure P-5) as the matter was compromised. It is further submitted that once the complaint under Section 138 of the Negotiable Instruments Act has been withdrawn, the present FIR under Section 174-A deserves to be quashed.

Notice of motion.

On asking of the Court Mr. Ram Kumar Singla, DAG, Haryana, who is present in the Court, accepts notice on behalf of the respondent-State of Haryana and has opposed the present petition by stating that the present FIR has been registered in pursuance of order dated 19.05.2018 (Annexure P-4) passed by Judicial Magistrate First Class, Faridabad. Hence, the present petition may be dismissed.

I have heard the learned counsel for the parties and have 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 (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.”

In a case titled as “**Ashok Madan vs. State of Haryana and another**” reported as 2020(4) RCR (Criminal) 87, it is 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.”

Another co-ordinate Bench of this Court in a 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 an FIR under section 174-A of Indian Penal Code was registered consequent upon declaration of the accused in the proceedings under Section 138 of the Negotiable Instruments Act as “proclaimed person”, then upon subsequent withdrawal of proceedings under Section 138 of the Negotiable Instruments Act on the basis of an amicable settlement, it has been observed that the continuation of proceedings under Section 174-A IPC shall be an abuse of the process of court.

In the present case, it is not in dispute that respondent No.2/complainant had filed complaint under Section 138 of the Act of 1881 for dishonour of cheque No.316370 dated 21.03.2017 amounting to Rs.1,00,000/- and it is in the said proceedings that the order dated 19.05.2018 (Annexure P-4) was passed vide which the petitioner was declared as proclaimed person and intimation was sent to SHO concerned, whereupon the present FIR No.348 dated 12.07.2018 was registered under Section 174-A of the Indian Penal Code, 1860 (Annexure P-1) at Police Station Sadar Ballabgarh, District Faridabad, Haryana. Thereafter, the matter was compromised between the parties and respondent No.2/complainant had withdrawn the complaint under Section 138 of the Act of 1881 as per order dated 08.11.2019, which is reproduced

hereinbelow:-

“Present: Complainant with Sh. J.S. Chauhan, Advocate.

Main file from the record room received. Ahlmad is directed to restore the file at its original number.

At this stage, complainant Ajit Singh suffered a statement that his compromise has been effected with the accused as per cheque No. 316370 dt. 21.03.2017, State Bank of India, Branch Chawla Colony. He has received the cheque of Rs. 86,000/- having No. 982166 dt. 08.12.2019, issued by SBI, Ballabgarh Branch. Nothing is balancing towards the accused. So, he withdraws the present complaint and complaint be consigned to records. Heard. In view of the statement suffered by the complainant, the present complaint stands **dismissed as withdrawn**. Accused is acquitted of the charges levelled against him. Bail bonds and surety bond of accused stands discharged. Name of surety be also deleted from the CIS. File be consigned to record room after due compliance.

Date of Order:2019-11-08

Priti, Stenographer G.III

(Neelam)

Judicial Magistrate-Ist Class

UID No.HR00468”

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.348 dated 12.07.2018 registered under Section 174-A of the Indian Penal Code, 1860 (Annexure P-1) at Police Station Sadar Ballabgarh, District Faridabad, Haryana and all the consequential proceedings arising therefrom, are ordered to be quashed qua the petitioner.

06.12.2022

Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No