

221-A

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

CRM-M-59826-2022

Date of Decision: 23.12.2022

Subhash

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. P.S. Jammu, Advocate
for the petitioner.

Mr. Ram K.Singla, DAG, Haryana
for respondent No.1/State.

Mr. Ashwani Gaur, Advocate
for respondent No.2.

HARSH BUNGER J. (ORAL)

This petition has been filed for quashing of FIR No.952 dated 30.10.2022 (Annexure P-2), under Section 174-A IPC, registered at Police Station City Sirsa, District Sirsa and all the consequent proceedings arising therefrom, as the criminal complaint No.NACT-449-2019 dated 03.04.2019, titled as “*Sirsa Central Cooperative Bank Ltd. Vs. Subhash*”, registered under Section 138 of the Negotiable Instruments Act, 1881, at the behest of respondent No.2/complainant before the Court of Judicial Magistrate Ist Class, Sirsa, has been withdrawn on the basis of compromise arrived at between the parties.

Learned counsel for the petitioner has submitted that in the present case, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'the NI Act') was filed by respondent No.2 against the

present petitioner for dishonour of the cheque and in the said complaint, the petitioner was wrongly declared as proclaimed person vide order dated 07.10.2022 (Annexure P-1) and an intimation was sent to S.P. Sirsa by the Judicial Magistrate First Class, Sirsa to direct SHO to register an FIR in respect of the same. In pursuance of the said intimation, the present FIR was registered. It is submitted that during pendency of the present case, the matter got amicably settled between the petitioner and respondent No.2 and subsequent thereto, respondent No.2 suffered a statement before the Judicial Magistrate First Class, Sirsa, not to pursue the Complaint No. NACT-449-2019 and sought withdrawal of the same. On the basis of said statement, the Judicial Magistrate First Class, Sirsa granted permission to withdraw the complaint vide its order dated 06.12.2022. It is further submitted that once the complaint under Section 138 of the NI Act has been withdrawn, the present FIR under Section 174-A IPC deserves to be quashed.

Learned State counsel has opposed the instant petition by stating that the FIR in question has been registered in pursuance of order dated 07.10.2022 (Annexure P-1), passed by the Judicial Magistrate Ist Class, Sirsa, hence the present petition may be dismissed.

Learned counsel representing respondent No.2 has admitted the factum of settlement of matter under Section 138 of the NI Act and also the withdrawal of complaint under Section 138 *ibid*, vide order dated 06.12.2022, passed by the Judicial Magistrate Ist Class, Sirsa.

I have heard learned counsel for the parties and have perused the paper book.

A co-ordinate Bench of this Court vide order dated 29.01.2019,

passed in **CRM-M-43813-2018** titled as “**Baldev Chand Bansal vs. State of Haryana and another**”, 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.

xxx xxx xxx

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 174-A 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 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 174-A 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 174-A 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 174-A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

Another co-ordinate Bench of this Court vide order dated 17.02.2022, passed in **CRM-M-14623-2021**, titled as **“Deepak vs. State of Haryana and another”**, 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 IPC was registered consequent upon declaration of the accused in the proceedings under Section 138 of the NI Act as 'Proclaimed Person' then upon subsequent withdrawal of proceedings under Section 138 of the NI 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 had filed a complaint under Section 138 of the NI Act for dishonour of cheque and it is in the said proceedings that order dated 07.10.2022 (Annexure P-1) was passed by the Judicial Magistrate Ist Class, Sirsa, vide which the petitioner was declared as proclaimed person and thereafter the present FIR No.952 dated 30.10.2022, under Section 174-A IPC (Annexure P-2), was registered at Police Station City Sirsa, District Sirsa. Subsequently, the matter was compromised between the parties and respondent No.2/complainant had withdrawn the complaint under Section 138 of the NI Act as per order dated 06.12.2022, which is reproduced hereinbelow:-

*“Present:Complainant with Ms. Renu Bala, learned Adv.
for complainant.*

*File taken up today as an application for withdrawal
of the case has been moved on behalf of complainant.*

*On this, authorized person of complainant bank has
made a statement in writing in this court that as per
documents Ex.C1 to Ex.C3 produced in the bank by
accused, he does not want to proceed with the present
complaint and withdraws the same.*

*In view of the statement of complainant, the present
complaint stands dismissed as withdrawn. File after due
completion and registration be consigned to records.*

Satish Kumar, Steno

*(Vishal)
JMIC, Sirsa/6.12.2022
(UID no. HR-0546)”*

Keeping in view the aforementioned facts and circumstances, as well as the authorities of law referred to above, the present petition is allowed and FIR No.952 dated 30.10.2022 (Annexure P-2), under Section 174-A IPC, registered at Police Station City Sirsa, District Sirsa and all the consequential proceedings arising therefrom, are ordered to be quashed qua the petitioner herein.

All pending application(s), if any, shall stand disposed of.

23.12.2022
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No