

CRM-M-4841-2023 (O&M) 2023:PHHC:105443

277

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4841-2023 (O&M)

Date of decision: 09.08.2023

Nawas Gafoor, Director, M/s Pinnium Bags Pvt. Ltd. and another

....Petitioners

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms.Monika Thakur, Advocate for petitioners.

Mr.Karan Garg, AAG, Haryana.

Ms. Shivya Sehgal, Advocate, for the respondents..

ARUN MONGA, J. (ORAL)

Present petition has been filed under section 482 Code of Criminal Procedure for quashing of FIR No.478, dated 17.11.2017, registered under Section 174-A of the IPC, at Police Station Udyog Vihar, Gurugram and all subsequent proceedings emanating therefrom.

2. Learned counsel for the petitioners contends that matter stands settled as entire cheque amount has been paid to the complainant/respondent no.2 and complaint case under Section 138 Negotiable Instrument Act, 1881 (for short 'the Act') has also been withdrawn vide order dated 03.01.2019 (Annexure P-4). He further contends that no useful purpose would be served by keeping the present proceedings pending.

3. Learned counsel for respondent no.2 does not controvert the aforesaid contention and admits the same.

4. Learned State counsel opposes the prayer made and submits that order declaring petitioner as a proclaimed person has rightly been passed. He further submits that the offence under Section 174A IPC is independent of the main case.

5. Arguments heard.

6. The complaint against the petitioner was for an offence under section 138 of the Negotiable Instruments Act.

6.1 Vide order dated 05.07.2017 Annexure P-2 passed by the learned Judicial Magistrate, Gurgaon, recorded its satisfaction that the accused-petitioners had absconded, declared them proclaimed persons and directed that intimation be sent to the concerned police station to initiate proceeding against them under section 174-A of IPC. FIR No.478 dated 17.11.2017 (Annexure P-3) was thereupon registered at Police Station Udyog Vihar, Gurgaon stating that the Court had declared the petitioners a proclaimed offenders. In my opinion, the very order declaring the petitioners a proclaimed persons/offenders was/is not legal.

6.2 Section 82(1) of the Code of Criminal Procedure provides that if any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. The provisions for declaring a person as proclaimed offender are contained in sub section (4) of the section 82 *ibid*. It lays down that where a proclamation published under sub-section (1) is in respect of person accused of offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the IPC, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

6.3 The complaint against the petitioners under Section 138 of the Act was for an offence other than aforesaid offences specified in sub section (4) of the section 82 *ibid*. This being the position, the order dated 05.07.2017 Annexure P-2 passed by the learned Judicial Magistrate, Gurugram declaring the petitioners a proclaimed persons was/is not

legal. The said order is the basis of the registration of the FIR under section 174A IPC against the petitioners and is, therefore, fatal to the FIR.

6.4 Moreover, the complaint under Section 138 of the Act has already been withdrawn following payment of the due amount by the petitioners to the complainant. Present proceedings under section 174-A IPC against the petitioners are consequential to the proclamation under section 82 Cr.P.C issued in the proceedings of the said complaint.

7. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned FIR and all subsequent proceedings emanating therefrom are liable to be quashed.

8. Accordingly, FIR No.478, dated 17.11.2017, registered under Section 174-A of the IPC, at Police Station Udyog Vihar, Gurugram alongwith all consequential proceedings arising therefrom against the petitioners, is quashed.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

09.08.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No