

2023:PHHC:134842

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117

CRM M-6334 of 2023
Date of Decision: 17.10.2023

Md. Parwej Alam

...Petitioner

Vs.

State of Haryana and another

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sachin Bansal, Advocate, for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

Mr. Vipin Kumar, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No.0261 dated 27.07.2022 under SSection 174-A of IPC, District Jhajjar, Police Station Sector 06, Bahadurgarh alongwith a notice under Section 41(A) of Cr.P.C. dated 01.01.2023 arising out of Complaint vide COMA No. 210 of 2016 in the matter of Ms. Diamond Footcare Vs. Ms. New Maharaja Footwear before the JMIC (Exclusive Court under-N.I. Act) Bahadurgarh, Jhajjar under Section 138 of NI Act, on the basis of order dated 03.08.2022 passed by JMIC/Presiding Officer, Daily Lok Adalat, Bahadurgarh (Annexure-4) and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contended that the respondent/complainant, i.e. M/s Diamond Footcare Udyog Pvt Ltd. through its authorized representative had filed a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') against the petitioner and the same was registered before the Court of Judicial Magistrate 1st Class, Bahadurgarh vide complaint bearing No. Coma No. 210 of 2016. The petitioner was ordered to be summoned by the Court of Judicial Magistrate 1st Class Bahadurgarh. As per order dated 29.03.2017, it was apparent that registered post acknowledgement due issued to the petitioner/accused had not been received back in any form and only postal receipt had been submitted. However, the petitioner was still ordered to be summoned through bailable warrant for 08.05.2017 and the same was not served. Again on 29.08.2017, the respondent/complainant submitted the correct address of the petitioner/accused and the bailable warrant had been issued for 31.01.2019. A perusal of order dated 31.01.2019 would reveal that the bailable warrant issued to the petitioner was received back with the report that the shop of the petitioner was found locked. Consequently, the petitioner was summoned through non bailable warrant for 15.05.2019. Again on 15.05.2019, it was reported that non bailable warrant issued against the petitioner was received back unexecuted and fresh warrant was issued for 07.08.2019. However, ultimately, the

Court of Judicial Magistrate 1st Class Bahadurgarh had declared the petitioner to be a proclaimed person under Section 82 of Cr.P.C. vide order dated 05.05.2022 (Annexure P-2) and the respondent was also directed to furnish list of property of the petitioner and directed the concerned SHO to lodge the FIR. Learned counsel contended that the Judicial Magistrate 1st Class, Bahadurgarh, did not take into consideration the fact that at no point of time, the petitioner was served. Even from the reports on summons/warrants, it was apparent that the shop of the petitioner was found locked on all occasions. The petitioner had not received any summons at any point of time and even the bailable warrant was not executed against the petitioner. However, in an exceptional hurry, the Judicial Magistrate 1st Class, Bahadurgarh declared the petitioner to be proclaimed person vide order dated 05.05.2022. Since the petitioner was not aware of the pendency of the complaint nor proclamation, thus, he could not appear before the trial Court. Ultimately, the petitioner came to know about the proceedings pending against him and he had appeared before the trial Court in the main case on 03.08.2022. The parties made a statement on 03.08.2022 that the matter had been compromised and the respondent had received total amount from the petitioner in terms of the compromise and nothing was pending. Consequently, the main case, i.e., the complaint under Section 138 of the Act was withdrawn by the respondent. However, in spite of

withdrawal of the main case, the petitioner had received a notice under Section 41-A of Cr.P.C. with respect to the FIR No. 0261 dated 27.07.2022 under Section 174-A IPC, Police Station Sector 6, Bahadurgarh. Learned counsel further submitted that neither the petitioner was served by the trial Court nor he had any knowledge with regard to the issuance of warrants against him from time to time. Apart from that, since the main complaint has already been withdrawn by the respondent, the continuation of the proceedings in the present FIR (Annexure P-3) under Section 174-A of IPC would amount to misuse of process of law.

3. Pursuant to the notice, an affidavit had been filed by the respondent No. 2 through its authorized representative Jai Parkash son of Shiv Narayan and the same was taken on record. In his affidavit dated 21.08.2023, the respondent No. 2 submitted that he had no objection, if the present FIR lodged against the present petitioner is ordered to be quashed by this Court.

4. I have heard learned counsel for the parties and perused the record.

5. It is not in dispute that the petitioner was not served at the address, where he was residing. Even, a report was made on the summons/warrants that the shop of the petitioner was found locked. Still, the trial Court continued with the proceedings and the petitioner was wrongly declared as proclaimed person. This Court also has held

in the matters of CRM-M-32465 of 2017 titled as “**Vikas Sharma Vs. Gurpreet Singh Kohli and another**” and CRM M-3813 of 2017 titled as “**Rajneesh Khanna VS. State of Haryana**” that once the substantial complaint, where from the proceedings had emanated itself stands settled amongst the parties, the FIR under Section 174-A IPC can also be quashed.

6. In the present case also, the proceedings under Chapter VI (Processes of compelled appearances) were initiated against the petitioner to secure his presence and to establish the rule of law, so that the proceedings could be finalized. Once, the parent dispute stood amicably resolved, proceedings initiated as a result of intermediary orders would not subserve any interest of justice. The proceedings under Section 138 of the Act, being *quasi* criminal, the object is to resolve the dispute and when such an object is served, the Court should adopt liberal approach towards the accused, who has already redressed the grievance of the complainant. Consequently, keeping in view that the service was not correctly and appropriately affected upon the petitioner in the instant case as well as the fact that the main case already stood settled in view of the compromise executed between the parties and the complaint having been withdrawn by the respondent, the continuation of the proceedings arising out of the present FIR No. 0261 dated 27.07.2022 under Section 174-A, registered at Police Station Jhajjar would be an instrument of misuse

of the process of the law. The petition is accordingly allowed and the FIR No. 0261 dated 27.07.2022 under Section 174-A, registered at Police Station Jhajjar alongwith all the consequential proceedings arising therefrom are quashed against the petitioners.

17.10.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

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