

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

CRM-M-5621-2023

DATE OF DECISION:-21.02.2023

Avadh Kumar Dubey

...Petitioner.

Vs.

State of Haryana and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sunil Garg, Advocate,
for the petitioner.

Mr. R.K. Ambavta, AAG, Haryana.

Mr. Vishal Sharda, Advocate,
for respondent No.2-complainant.

HARKESH MANUJA, J. (Oral)

By way of present petition under Section 482 Cr.P.C., prayer has been made for quashing of order dated 01.06.2021 passed by the court of learned Chief Judicial Magistrate, Ambala, in complaint No.COMA/1797 of 2017, filed under Sections 138/141 of the Negotiable Instruments Act, 1881 (hereinafter referred to "1881 Act"), whereby the petitioner was declared as a proclaimed person and also the consequential FIR No.323, dated 24.08.2021, under Section 174-A IPC at Police Station Ambala City, District Ambala.

Facts of the case are that on account of dishonour of cheque bearing No.118, dated 15.05.2017, amounting to Rs.2,00,000/-, a complaint under Section 138 of the 1881 Act, came to be filed at the instance of respondent No.2 against the petitioner, wherein, he was summoned vide order dated 17.02.2018 passed by the court learned JMJC, Ambala. The

petitioner was granted the concession of bail in the aforementioned complaint, however, on account of his non-appearance, later, he was declared as proclaimed person, vide order dated 01.06.2021 (Annexure P-5) followed by registration of FIR No.323 dated 24.08.2021, under Section 174-A IPC at Police Station Ambala City, District Ambala.

While challenging the order dated 01.06.2021 as well as the aforesaid FIR No.323 dated 24.08.2021, learned counsel for the petitioner submits that after having been declared as proclaimed person, he submitted himself to the jurisdiction of the trial court in the proceedings arising out of complaint under Section 138 of the 1881 Act and was granted the concession of regular bail on 02.03.2022 (Annexure P-7) and thereafter, a settlement came to be arrived at between the parties as the petitioner discharged his liability by paying the amount of cheque in favour of respondent No.2-complainant and in pursuance thereof, the complaint file was ordered to be consigned to the record room, vide order dated 12.09.2022 passed by learned Presiding Officer, Daily Lok Adalat-cum-Judicial Magistrate Ist Class, Ambala.

Learned counsel further submits that even in the proceedings arising out of FIR No.323 dated 24.08.2021, the petitioner has been granted the concession of regular bail and thus, submits that the proceedings under Section 138 of the 1881 Act having settled between the parties against discharge of liability, the petitioner already granted bail in the consequential FIR, no useful purpose is going to be served by continuing with the proceedings arising therefrom i.e. FIR No.323 dated 24.08.2021, under Section 174-A IPC. In support, learned counsel for the petitioner relies

upon judgment of this Court, passed in CRM-M-22685-2022, titled as ***“Gurlal Singh and another vs. State of Punjab and another”***.

In pursuance to notice issued by this Court, Mr. Vishal Sharma, Advocate has appeared on behalf of respondent No.2, who admits the factum of settlement arrived at between the parties against discharge of liability by the petitioner, having paid the due amount and thus, does not opposes the prayer made in the present petition.

On the other hand, learned State counsel vehemently opposes the prayer made in the petition while submitting that the registration of FIR under Section 174-A is primarily on account of non-appearance of petitioner before the trial court in the proceedings arising out of complaint under Section 138 of the 1881 Act and has to be dealt with independently and order of settlement of complaint under Section 138 of the 1881 Act cannot be taken to be a ground for the purpose of seeking quashing of FIR under Section 174-A IPC.

I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

Once, the parties have already entered into a settlement and petitioner has already discharged his liability having paid the entire cheque amount to respondent-complainant and complaint under Section 138 of the 1881 Act, having been consigned to the record-room, the petitioner having even submitted himself to the jurisdiction of the trial court post his declaration as that of a proclaimed person and even having got the concession of regular bail in the FIR in question, no useful purpose is going

to be served by carrying on with the proceedings arising out of the present FIR No.323, dated 24.08.2021. Even otherwise, the case of the petitioner is fully covered with the judgment passed by this Court in **Gurlal Singh's** case (supra). Further more, the primary purpose of proceedings under Section 82 of Cr.P.C., against the petitioner was to secure his presence before the trial court, in proceedings under Section 138 of the 1881 Act, which stood achieved with his appearance.

Accordingly, petition is allowed. Order dated 01.06.2021 along with FIR No.323 dated 24.08.2021, under Section 174-A, registered against the petitioner at Police Station Ambala City, District Ambala and all other subsequent proceedings arising therefrom are ordered to be quashed, subject to payment of costs of Rs.10,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer's Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of two weeks from today.

21.02.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No