

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-7397-2023

Date of Decision: 23.03.2023

Vijay Kumar

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Ms. Kanika Ahuja, Advocate for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

Respondent No. 2-Dharam Raj (complainant) in person with
Ms. Chahat Aggarwal, Advocate.

ASHOK KUMAR VERMA, J. (ORAL)

Power of attorney filed on behalf of respondent No. 2 is
taken on record.

Service complete.

The petitioner has filed the second petition under Section
482 Cr.P.C. for quashing of order dated 11.12.2014 (Annexure P-5)
(wrongly mentioned as Annexure P-4 in the head note) passed by the
learned Judicial Magistrate Ist Class, Karnal in *Case No. NACT-1748-
2007 titled as 'M/s Sher Singh Jai Parkash vs. Vijay Kumar'*, filed under
Section 138 of the Negotiable Instruments Act, 1881 (hereinafter
referred to as-'the Act'), whereby the petitioner was declared as
proclaimed person and quashing of FIR No. 839 dated 28.10.2022

(Annexure P-9) registered under Section 174-A IPC at Police Station Indri, District Karnal and all subsequent proceedings arising therefrom.

Briefly stated that the complainant is running the shop of commission agent in the name and style of M/s Sher Singh Jai Parkash at New Grain Market, Indri. The petitioner had been dealing with the complainant-firm since long and as per the account books of the complainant-firm, on 13.07.2005 a sum of Rs.1,38,300/- was due and payable by the petitioner. In partial discharge of his liability, the petitioner issued cheque No. 610806 dated 07.06.2007 for sum of Rs.50,000/- in favour of the complainant. When the complainant deposited the said cheque in the bank, the same was dishonoured for the reason 'Insufficient Funds'. Thereafter, the complainant filed a complaint under Section 138 of the Act against the petitioner. On his non-appearance before the trial Court, the petitioner was declared proclaimed person vide impugned order dated 11.12.2014 (Annexure P-5).

Learned counsel for the petitioner *inter alia* contends that the matter has amicably been settled between the parties vide compromise dated 12.12.2022 (Annexure P-10), as the petitioner had paid the entire disputed amount to respondent No. 2-complainant. Ultimately, vide order dated 09.01.2023 (Annexure P-11), the above said complaint was dismissed as withdrawn. She further submits that once the main complaint had already been dismissed as withdrawn, then continuation of proceedings in the impugned FIR No. 839 dated 28.10.2022 (Annexure P-9) registered under Section 174-A IPC, pursuant to the order dated 11.12.2014 (Annexure P-5), would be an

abuse of process of law.

Complainant-Dharam Raj, who is present in person along with his counsel submits that the matter has been compromised and he had received an amount of Rs.50,000/- from the petitioner towards full and final settlement. He further submits that he has no objection in case the present petition is allowed.

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

It is not in dispute that petitioner was declared as proclaimed person vide order dated 11.12.2014 (Annexure P-5) and directions were issued to register FIR against him under Section 174-A IPC, in the complaint filed by complainant-Dharam Raj, under Section 138 of the Act. It is also not disputed that the matter has been compromised between the parties and the main complaint filed under Section 138 of the Act was dismissed as withdrawn vide order dated 09.01.2023 (Annexure P-11).

In *Narender Singh Vs. State of Haryana and others, 2022 (2) RCR (Criminal) 683.*, it was held by this Court that once complaint under Section 138 of the Act was withdrawn, then continuance of prosecution in FIR under Section 174-A IPC would be abuse of process of Court.

A Coordinate 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.

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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.”

A perusal of the above judgment would show that in a similar case where the FIR had been registered under Section 174-A of the IPC, in view of the order passed in a complaint filed under Section 138 of the Act, while declaring the petitioner as proclaimed offender, the co-ordinate Bench of this Court after relying upon various judgments observed that once the main complaint under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, the continuation of proceedings under Section 174-A of the IPC is nothing but an abuse of the process of law. The said aspect was one of the main consideration for allowing the petition and setting aside the order declaring the petitioner therein as proclaimed person as well as quashing of the FIR under Section 174-A of the IPC.

In the present case the complaint under Section 138 of the Act, had already been withdrawn by the complainant. Once the impugned complaint has been withdrawn, then the continuation of proceedings in the FIR under Section 174-A of IPC would be an abuse of the process of Court.

Keeping in view the above facts and circumstances, the present petition is allowed and the order dated 11.12.2014 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Karnal whereby the petitioner was declared as proclaimed person as well as impugned FIR No. 839 dated 28.10.2022 (Annexure P-9) registered under Section 174-A IPC and all subsequent proceedings arising therefrom, are hereby quashed.

March 23, 2023

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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No