

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11679-2023 (O & M)

Date of decision: 15.02.2023

Gurwinder Singh @ Gurinder Singh

Petitioner

.....

V/s

Rajwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amandeep Singh Gill, Advocate,
for the petitioner.

None for the respondent.

JASJIT SINGH BEDI, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing of the impugned order dated 29.09.2018 (Annexure P-4) passed by the JMIC, Jalandhar vide which the petitioner was declared a proclaimed person in criminal complaint bearing No.472/2015 dated 08.12.2015 titled as 'Rajwinder Singh versus Gurwinder Singh and others' under Sections 323, 452, 504, 506, 427, 34 IPC pending before the JMIC, Jalandhar.

2. The learned counsel for the petitioner contends that the petitioner went to Australia in February, 2007 on a student visa and completed his studies in 2010. He became an Australian citizen in November, 2014. He last came to India in December, 2015 and went back to Australia in February, 2016, after which he has never come back.

3. Due to some misunderstanding between the parties, the respondent got registered a criminal complaint bearing No.472/2015 dated 08.12.2015 under Sections 323, 452, 504, 506, 427, 34 IPC before the JMIC,

Jalandhar against the petitioner and his co-accused. A copy of the said complaint is attached as Annexure P-1 to the petition. The accused including the petitioner were ordered to be summoned vide order dated 07.11.2017 by the Court of JMIC, Jalandhar under Sections 323, 452, 427, 506 read with Section 34 IPC. A copy of the summoning order is attached to the petition as Annexure P-2.

4. The petitioner alongwith his co-accused had filed a quashing petition bearing No.CRM-M-17979-2018 titled as 'Gurinder Singh @ Gurwinder Singh and other versus Rajwinder Singh', in which notice was issued on 30.04.2018. Meanwhile, despite the fact that the petitioner was residing abroad, the petitioner came to be declared a proclaimed person on 29.09.2018 vide order Annexure P-4.

5. However, subsequent thereto, a compromise was arrived at between the parties on 15.11.2018 (Annexure P-5).

An affidavit dated 16.11.2018 (Annexure P-6) was also furnished by the complainant -respondent regarding the same.

6. Pursuant thereto, the statement of the respondent-complainant was recorded in the Court of JMIC, Jalandhar and the complaint (Annexure P-1) came to be withdrawn vide orders dated 16.11.2018 and 18.12.2018 (Annexures P-8 and P-9 respectively).

7. The learned counsel for the petitioner contends that as the petitioner was declared a proclaimed person in the complaint No. 472/2015 dated 08.12.2015 (Annexure P-1) which now stands withdrawn, the impugned order dated 29.09.2018 (Annexure P-4) whereby the petitioner was declared a proclaimed person ought to be quashed.

8. I have heard the learned counsel for the petitioner.

9. A co-ordinate 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 (CrI.) 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.”

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

11. Another co-ordinate Bench of this Court in a case titled as “**Ashok Madan vs. State of Haryana and another**” reported as **2020(4) RCR (Criminal) 87** has also held as under:-

“No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174A 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 174A 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 174A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

12. A perusal of the relevant extract of the above judgment would show that where the main case was dismissed for want of prosecution, it was observed that the continuation of proceedings under Section 174-A IPC shall be an abuse of the process of court. A similar view has been expressed by this Court in “Anil Kumar Versus Jitender Kumar and another, CRM-M-5878-2022 decided on 06.04.2022”, “Anil Kumar Versus Jitender Kumar and another, CRM-M-5755-2022 decided on 06.04.2022” and “Varinder Kumar @ Virender Kumar Versus State of Haryana and another, CRM-M-42551-2021 decided on 19.04.2022”.

13. In the present case the proceedings in the criminal complaint No.472/2015 dated 08.12.2015 (Annexure P-1) have culminated in a settlement with the withdrawal of the complaint (Annexure P-1). Therefore, no useful purpose would be served by allowing these proceedings to continue.

14. In view of the above, the present petition is allowed and the impugned order dated 29.09.2018 (Annexure P-4) passed by the JMIC, Jalandhar and all other consequential proceedings arising therefrom are hereby quashed qua the petitioner.

(JASJIT SINGH BEDI)
JUDGE

February 15, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No