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

CRM-M-8552-2023(O&M)
Date of Decision: 27.02.2023

SHER MOHAMMAD

....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Devender Kumar, Advocate
for the petitioner.

HARSH BUNGER, J. (Oral)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.581 dated 10.11.2022 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Ballabgarh City, District Faridabad (Annexure P-3) and all the consequential proceedings which was registered on account of declaration of petitioner as proclaimed person by the learned Judicial Magistrate First Class, Faridabad, vide order dated 31.10.2022 (Annexure P-2) in compliant No.6817 of 2018 titled as “Laxman Mann Versus Sher Mohammad” (Annexure P-1).

Succinctly, one person namely Laxman Maan filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short “N.I. Act”) against the petitioner. In the said complaint, the petitioner was declared as proclaimed person, vide order dated 31.10.2022 passed by learned Judicial Magistrate First Class (Annexure P-2) and concerned SHO was directed to register case. On receipt of the order dated 31.10.2022, the Police has registered the FIR No.581 dated 10.11.2022, under Section 174-A

IPC at Police Station Ballabhgarh City, District Faridabad (Annexure P-3).

In the meanwhile, petitioner challenged the order dated 31.10.2022 (Annexure P-2) declaring him proclaimed person by filing CRM-M-54784-2022, which was disposed of vide order dated 21.12.2022 (Annexure P-4) by observing as under:-

“During the course of hearing, learned counsel for the parties after taking instructions from their respective parties have arrived at a consensus to settle the dispute amicably. As per consensus, the petitioner is ready to pay the entire amount of Rs.2 lakh to the complainant regarding which the complaint under Section 138 of the Negotiable instruments Act has been instituted before the learned Judicial Magistrate First Class, Faridabad, and the matter is now pending for 22.12.2022.

On the other hand, learned counsel representing respondent No.1 has submitted that he has instructions to accept the offer made by learned counsel for the petitioner on behalf of petitioner and he is ready to accept the amount of Rs.2 lakh as full and final settlement of all claims in respect of the cheque in dispute regarding which complaint under Section 138 of the Negotiable Instruments Act is pending. He further submits that upon payment of the said amount, no dispute shall remain pending between the parties and he shall not initiate any action in respect of cheque in dispute.

In view of the amicable settlement arrived at between the parties, the present petition is disposed of with a direction that the petitioner shall appear before the trial Court on 22.12.2022 along with the demand draft of Rs.1.5 lakh in the name of respondent No.1 which shall be paid to the respondent (Laxman Mann). Upon payment of the said amount, the petitioner shall be released on bail to the satisfaction of the trial court and the trial court shall offer one opportunity to the petitioner to make the balance payment of Rs.50,000/- on any date as it may deem fit.

It is noted that if the petitioner makes the payment of the entire agreed amount of Rs.2 lakh on 22.12.2022 itself, then necessary orders be passed by trial Court on the basis of amicable settlement between the parties.

In case, the petitioner does not appear before the trial Court on the date fixed or make the payment as indicated above then this petition shall be deemed to have been dismissed.

The present petition is disposed of in aforementioned terms.

In pursuance to order dated 21.12.2022 (Anneuxre P-4) passed

by this Court in CRM-M-54784-2022, the petitioner appeared before trial Court and paid settlement amount of Rs.2,00,000/- to the complainant, whereupon complainant withdrew his complaint vide order dated 22.12.2022 (Annexure P-5).

Now present petition has been filed under Section 482 Cr.P.C seeking quashing of FIR No.581 dated 10.11.2022 (Annexure P-3), inter alia on the plea that once the present dispute between the parties has been amicably settled and the complaint under Section 138 of the Negotiable Instruments Act, 1881 stands withdrawn then, keeping the present FIR alive would be an abuse of the process of the Court.

Notice of motion.

On asking of the Court Mr. Ram Kumar Singla, DAG, Haryana, who is present in the Court, accepts notice on behalf of the respondent-State of Haryana and has opposed the present petition by stating that the present FIR has been registered in pursuance of order dated 31.10.2022 passed by learned Judicial Magistrate First Class, Faridabad, hence, the present petition may be dismissed.

This Court has heard the learned counsel for the parties and has perused the paper book.

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 (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.

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.”

In case titled as “**Ashok Madan vs. State of Haryana and another**” reported as 2020(4) RCR (Criminal) 87, it is 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.”

Another co-ordinate Bench of this Court in a case bearing

CRM-M-14623-2021 titled as “**Deepak vs. State of Haryana and another**”,

decided on 17.02.2022, has held as under:-

“...Since, the proceedings under Section 138 of the Act of 1881 has been withdrawn and the present FIR has been registered on account of non-appearance of the petitioner, this Court feels that continuance of the proceedings in the present FIR would be an abuse of process of the Court.

Keeping in view the abovesaid facts and circumstances, as well as the authorities of law referred to above, the present petition is allowed and FIR No.969 dated 04.11.2018 registered under Section 174-A of IPC at Police Station Ballabgarh City, District Faridabad (Annexure P-3) and all the consequential proceedings arising therefrom, are ordered to be quashed qua the petitioner...”

A perusal of the above referred judgments would manifest that where an FIR under section 174-A of Indian Penal Code was registered consequent upon declaration of the accused in the proceedings under Section 138 of the Negotiable Instruments Act as “Proclaimed Person”, then upon subsequent withdrawal of proceedings under Section 138 of the Negotiable Instruments Act on the basis of an amicable settlement, it has been observed that the continuation of proceedings under Section 174-A IPC shall be an abuse of the process of court.

In the present case, it is not in dispute that complainant had filed complaint under Section 138 of the Negotiable Instruments Act of 1881 against present petitioner for dishonour of cheque bearing No.151527 dated 06.04.2018 amounting to Rs.2,00,000/-. In the said proceedings, an order dated 31.10.2022 was passed vide which the petitioner was declared as proclaimed person and intimation was sent to SHO concerned, whereupon the present FIR No.581 dated 10.11.2022 was registered under Section 174-A of the Indian Penal Code, 1860 at Police Station Ballabhgarh City, District Faridabad (Annexure P-3). Thereafter, the matter was compromised between the parties and complainant had withdrawn the complaint under Section 138 of the Negotiable Instruments Act of 1881 as per order dated 22.12.2022

(Annexure P-5), which is reproduced hereinbelow:-

“Accused Sher Mohammad appeared in person in compliance of order dated 21.12.2022 passed by Hon'ble Punjab & Haryana High Court. Fresh vakalatnama on behalf of accused filed.

Complainant appeared and suffered a statement to the effect that he has compromised the matter with accused in total amount of Rs.2,00,000/-. He further stated that he has received Rs.2,00,000/- through two demand drafts bearing no.0001551 dated 22.12.2022 for Rs.50,000/- and DD no.001549 dated 22.12.2022 for Rs.1,50,000/- both drawn on HDFC Bank. Nothing is due upon accused. Therefore, he does not want to pursue with the present complaint and withdraw the same.

*Heard. In view of the statement of complainant, the present complaint is hereby **dismissed as withdrawn**. Since the complainant has withdrawn his complaint and there is no need of appearance of accused any more therefore, the accused is not required to furnish bail bonds. File be consigned to the record room, after due compliance.*

*Date of order: 22.12.2022
Priyanka, Stenographer Gr.II*

*(Richu)
Judicial Magistrate –Ist Class
UID NO.HR00514”*

Keeping in view the abovesaid facts and circumstances, as well as the authorities of law referred to above, the present petition is allowed and FIR No.581 dated 10.11.2022 registered under Section 174-A of the Indian Penal Code, 1860 at Police Station Ballabhgarh City, District Faridabad (Annexure P-3) and all the consequential proceedings arising therefrom, are ordered to be quashed qua the petitioner.

27.02.2023
Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No