

249 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-10242-2021
Date of Decision: 12.01.2023

Pawan Kumar

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. S.K. Tripathi, Advocate
for the petitioner.

Mr. Ram K.Singla, DAG, Haryana
for respondent No.1/State.

HARSH BUNGER J. (ORAL)

This is a petition filed on behalf of the petitioner seeking quashing of FIR No.46 dated 20.01.2020 (Annexure P-3), under Section 174-A IPC, registered at Police Station Ballabgarh City, District Faridabad as well as impugned order dated 06.01.2020 (Annexure P-2), passed by the Judicial Magistrate Ist Class, Faridabad, whereby the petitioner was declared as a proclaimed person in complaint bearing NACT No.8856 dated 27.08.2018 (Annexure P-1), titled as ***“M/s Attri Building Material Supplier Vs. M/s Aggarwal Sales Corp. Private Limited and another”***, filed under Sections 138, 141 and 142 of the Negotiable Instruments Act read with Section 420 IPC, and all the consequential proceedings arising therefrom, *inter alia*, stating that the matter has been compromised between the parties.

Learned counsel for the petitioner has submitted that a complaint under Sections 138, 141 and 142 of the Negotiable Instruments

Act read with Section 420 IPC was filed at the behest of respondent No.2/complainant-company, through its Authorized Representative Om Prakash, against the present petitioner for dishonour of the cheque and in the said complaint, the petitioner was wrongly declared as proclaimed person vide order dated 06.01.2020 (Annexure P-2) and an intimation regarding the said order was sent by the Judicial Magistrate Ist Class, Faridabad to the Station House Officer concerned to register an FIR in respect of the same. In pursuance of the said intimation, the FIR (Annexure P-3) was registered. It is submitted that during pendency of the present case, the matter got amicably settled between the petitioner and complainant-company and subsequent thereto, Om Prakash (Authorized Representative of complainant-company) suffered a statement (Annexure P-4) before the Judicial Magistrate Ist Class, Faridabad, regarding not to pursue the complaint bearing NACT No.8856 dated 27.08.2018 (Annexure P-1) and sought withdrawal of the same. On the basis of said statement, the Judicial Magistrate First Class, Faridabad disposed of the complaint (Annexure P-1) being dismissed as withdrawn, vide its order dated 17.02.2021 (Annexure P-4). It is further submitted that once the complaint under Section 138 of the Negotiable Instruments Act has been withdrawn, the present FIR under Section 174-A IPC (Annexure P-3) deserves to be quashed.

Learned State counsel has not disputed the fact that the complaint (NACT No.8856 dated 27.08.2018) stands withdrawn vide order dated 17.02.2021 (Annexure P-4), passed by the Judicial Magistrate Ist Class, Faridabad and he does not oppose the prayer of petitioner for quashing of FIR.

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

A co-ordinate Bench of this Court vide order dated 29.01.2019, passed in **CRM-M-43813-2018** titled as “**Baldev Chand Bansal vs. State of Haryana and another**”, 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 174-A 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 174-A 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 174-A 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 174-A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

Another co-ordinate Bench of this Court vide order dated 17.02.2022, passed in **CRM-M-14623-2021**, titled as “**Deepak vs. State of Haryana and another**”, 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 IPC 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 the complainant-Company had filed a complaint under Sections 138, 141 and 142 of the Negotiable Instruments Act read with Section 420 IPC for dishonour of cheque and it is in the said proceedings that order dated 06.01.2020 (Annexure P-2) was passed by the Judicial Magistrate Ist Class, Faridabad, vide which the petitioner was declared as proclaimed person and as a consequential action thereof, the present FIR No.46 dated 20.01.2020 (Annexure P-3), under Section 174-A IPC, was registered at Police Station Ballabgarh City, District Faridabad. Thereafter, the matter was compromised between the parties and complainant had withdrawn the complaint under Sections 138, 141 and 142 of the Negotiable Instruments Act read with Section 420 IPC as per order dated 17.02.2021 (Annexure P-4), which is reproduced hereinbelow:-

“Present: Sh. Sanjeev Kumar Attri, Advocate for complainant.

Accused declared proclaimed person v.o.d. 06.01.20

Case file taken up as an application is moved by the complainant seeking permission to withdraw the complaint through his counsel. At this stage, A.R. Of complainant-company suffered a separate statement as detailed therein

that he has received cheque amount from the accused. Therefore, he does not want to pursue further in the present complaint and withdraw the same. Statement recorded. Deponent is duly identified by his counsel.

Heard. In view of the statements made by A.R. Of complainant-company, present complaint is dismissed as withdrawn. File be consigned to the records after due complainece.

*Date of Order: 2021-02-17 (Amit Sihag)
Satish Kumar, Steno Judicial Magistrate - Ist Class
UID No. HR00371 ”*

Thus, after the withdrawal of proceedings under Section 138 of the Negotiable Instruments Act on the basis of amicable settlement, continuation of proceedings under Section 174-A IPC shall be an abuse of process of law.

Keeping in view the aforementioned facts and circumstances, as well as the authorities of law referred to above, the present petition is allowed and FIR No.46 dated 20.01.2020 (Annexure P-3), under Section 174-A IPC, registered at Police Station Ballabgarh City, District Faridabad as well as impugned order dated 06.01.2020 (Annexure P-2), passed by the Judicial Magistrate Ist Class, Faridabad, and all the consequential proceedings arising therefrom, are quashed qua the petitioner.

All pending application(s), if any, shall stand disposed of.

12.01.2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No