

CRM-M-13452-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(274)

HARISH KUMAR

CRM-M-13452-2023
Date of Decision:-24.08.2023
.....Petitioner

Versus

STATE OF PUNJAB & ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Nitin Sharma, Advocate for the petitioner.
Mr. Neeraj Poswal, Asstt. A.G., Haryana.

Mr. Kulwinder Singh, Advocate for
Mr. Hitesh Ghai, Advocate for respondent No.2.

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JASJIT SINGH BEDI, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing of the order dated 01.09.2022 (Annexure P-1) passed by the JMIC, Khanna whereby the petitioner has been declared a proclaimed offender in complaint case under Section 138 of the Negotiable Instruments, 1881 bearing No.NACT/259/2020 dated 09.07.2020.

The brief facts of the case are that in discharge of his legal liability, the petitioner/accused issued a post-dated cheque bearing No.003210 dated 09.03.2020 for an amount of Rs.2,30,000/- in favour of respondent No.2-complainant. The said cheque came to be dishonoured. Pursuant thereto, as no payment was made in lieu of the dishonoured cheque, a complaint under Section 138 of Negotiable Instruments Act came to be instituted against the petitioner/accused and he was summoned to face

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trial. Subsequently, he was declared a proclaimed offender vide order dated 01.09.2022 (Annexure P-1).

The aforesaid order was challenged in the present petition and during the pendency of this petition a compromise was arrived at and the complaint was ordered to be dismissed as withdrawn in terms of the order dated 01.06.2023, copy of which has been placed on record as X.

The learned counsel for the petitioner/accused submits that he had wrongly been declared a proclaimed offender and on learning about the same, the petitioner compromised the matter with the complainant. Thereafter, on 01.06.2023, the counsel for respondent No.2-complainant in the Trial Court got recorded his statement that as per his instructions, the complainant did not want to proceed further with the present complaint and wanted to withdraw the same. Based on the said statement, the complaint was ordered to be dismissed as withdrawn on 01.06.2023.

The learned State counsel has opposed the present petition and has submitted that the complaint has been correctly registered.

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

From the above-said facts and circumstances, it is apparent that the present FIR was registered in view of the fact that the petitioner was declared as a proclaimed person in the proceeding under the Negotiable Instruments Act, 1881. The impugned complaint itself has been withdrawn.

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:-

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“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.*

xxx xxx xxx

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

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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 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 quashing of the FIR under Section 174-A IPC.

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,

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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.”

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”.

In the present case the proceedings under the Negotiable Instruments Act have culminated in a settlement with the withdrawal of the complaint.

In view of the above, the present petition is allowed and the order dated 01.09.2022 (Annexure P-1) passed by the JMIC, Khanna along with all subsequent proceedings arising therefrom are hereby quashed.

24.08.2023*Jitesh***(JASJIT SINGH BEDI)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No