

246 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-13458-2021
Date of Decision: 15.02.2023

Karambir Singh

..... Petitioner

Versus

State of Haryana and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. R.S. Dadwal, Advocate and
Mr. Dinesh Kaushik, Advocate
for the petitioner.

Mr. Ram Kumar Singla, DAG, Haryana.

HARSH BUNGER J. (ORAL)

This is a petition filed on behalf of the petitioner seeking quashing of FIR No.118 dated 16.03.2017 (Annexure P-2), under Section 174-A of the Indian Penal Code, registered at Police Station Sector-5, District Panchkula and order dated 18.02.2017 (Annexure P-1), passed by the Court of Judicial Magistrate Ist Class, Panchkula, declaring the petitioner as a proclaimed person in Complaint bearing NACT No.654 of 2016, titled as “*Kamlesh Vs. Karambir Singh*”, filed under Section 138 of the Negotiable Instruments Act as well as all the consequential proceedings arising therefrom, including order dated 06.04.2019 (Annexure P-5), passed by the Court of Chief Judicial Magistrate Panchkula, declaring the petitioner as a proclaimed person in the aforesaid FIR (Annexure P-2).

Learned counsel for the petitioner has submitted that a complaint under Section 138 of the Negotiable Instruments Act was filed at the behest of respondent No.2/complainant against the present petitioner,

wherein the petitioner was wrongly declared as proclaimed person vide order dated 18.02.2017 (Annexure P-1) and an intimation regarding the said order was sent by the Judicial Magistrate Ist Class, Panchkula 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-2) was registered. It is submitted that during pendency of the present case, the petitioner filed an application under Section 438 of the Code of Criminal Procedure before the Court of Additional Sessions Judge, Panchkula, praying for grant of anticipatory bail in the aforesaid complaint case, whereupon respondent No.2/complainant appeared before the Court and made a statement to the effect that she has received the full and final payment of the cheque amount in question from the petitioner and she is ready to withdraw the complaint in question, which was filed against the petitioner. Consequent thereto, the petitioner was granted the concession of anticipatory bail, vide order dated 21.03.2017, passed by the Court of Additional Sessions Judge, Panchkula, and the petitioner and respondent No.2/complainant were directed to appear before the trial Court regarding withdrawal of the aforesaid complaint case under Section 138 of the Negotiable Instruments Act. Subsequent thereto, respondent No.2/complainant suffered a statement before the Judicial Magistrate Ist Class, Panchkula, that she does not want to pursue the complaint bearing NACT No.654 of 2016 and sought withdrawal of the same. On the basis of said statement, the Judicial Magistrate First Class, Panchkula disposed of the complaint being dismissed as withdrawn, vide its order dated 21.03.2017 (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 of the Indian Penal Code (Annexure P-2) and all the consequential proceedings arising therefrom, deserve to be quashed.

Learned State counsel has not disputed the fact that the complaint (NACT No.654 of 2016) stands withdrawn vide order dated 21.03.2017 (Annexure P-4), passed by the Judicial Magistrate Ist Class, Panchkula 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 of the 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 of the Indian Penal Code shall be an abuse of the process of Court.

In the present case, it is not in dispute that the respondent No.2/complainant had filed a complaint under Section 138 of the Negotiable Instruments Act against the present petitioner and it is in the said proceedings that order dated 18.02.2017 (Annexure P-1) was passed by the Judicial Magistrate Ist Class, Panchkukla, vide which the petitioner was declared as proclaimed person and as a consequential action thereof, the present FIR No.118 dated 16.03.2017 (Annexure P-2), under Section 174-A of the Indian Penal Code, was registered at Police Station Sector-5, Panchkula. Thereafter, the matter was compromised between the parties and complainant had withdrawn the complaint under Section 138 of the Negotiable Instruments Act as per order dated 21.03.2017 (Annexure P-4),

which is reproduced hereinbelow:-

“Present: Complainant in person with Sh. Sunil Kundu, Adv. File taken up before Daily Lok Adalat as per the order of Ld. Appellate court dated 21.03.2017. Same is restored to its original number. Thereafter, complainant has suffered a statement that she has already received the cheque amount of Rs.2,00,000/- in the court of Sh. Rajnish Kumar Sharma, Ld. Additional Sessions Judge, Panchkula, therefore, she does not want to pursue the present complaint further and wants to withdraw the same. She was duly identified by her counsel. Heard. Keeping in view of the statement of complainant, present complaint stands dismissed as withdrawn. File be consigned to the record room, after due compliance.

*Pronounced in Daily Lok Adalat:- (Dr. Savita Kumari)
Judicial Magistrate Ist Class
Panchkula.21.03.2017”*

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 of the Indian Penal Code 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. FIR No.118 dated 16.03.2017 (Annexure P-2), under Section 174-A of the Indian Penal Code, registered at Police Station Sector-5, District Panchkula and order dated 06.04.2019 (Annexure P-5), passed by the Court of Chief Judicial Magistrate Panchkula, declaring the petitioner as a proclaimed person in the aforesaid FIR (Annexure P-2), are quashed qua the petitioner.

Needless to say that once the main complaint bearing NACT

No.654 of 2016, titled as “*Kamlesh Vs. Karambir Singh*”, filed under Section 138 of the Negotiable Instruments Act, stands dismissed as withdrawn vide order dated 21.03.2017 (Annexure P-4); then the order dated 18.02.2017 (Annexure P-1), passed by the Court of Judicial Magistrate Ist Class, Panchkula, declaring the petitioner as a proclaimed person in the said Complaint under Section 138 of the Negotiable Instruments Act, has no independent existence in the eyes of law.

Present petition is accordingly disposed of.

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

15.02.2023*Apurva***(HARSH BUNGER)
JUDGE**

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