

(113) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-15309-2023 in
CRM-M-14910-2022
Date of Decision: 11.04.2023

RAJ KUMAR

... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sandeep Lather, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

Mr. Rahul Jaswal, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J (Oral)

CRM-15309-2023

This is an application filed under Section 482 Cr.P.C. for preponing the date of hearing in the case i.e. fixed for 22.05.2023.

Notice in the application.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana accepts notice on behalf of the respondent-State.

For the reasons mentioned in the application, the same is allowed and the date of hearing is preponed from 22.05.2023 to today and the matter is taken up on board today itself.

CRM-M-14910-2022

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 25.01.2022 (Annexure P-16) passed by the

Additional Sessions Judge, Sonapat, whereby the petitioner has been declared a proclaimed person during the pendency of the Appeal No.CRA-71 of 2020 titled as Raj Kumar Versus Randhawa which was dismissed on 27.01.2022 (Annexure P-17) in complaint No.COMA/183 of 2016 dated 12.02.2016 under Section 138 of the Negotiable Instruments Act.

2. The brief facts of the case are that in the year 2014, the accused/petitioner borrowed a sum of Rs.8,25,000/- from respondent No.2-complainant for the purpose of purchasing flat at Delhi and also for the purpose of promoting the business of his flour mill at Delhi with the assurance to return the borrowed amount by 10.12.2015. Acceding to the request of the accused/petitioner, the respondent No.2-complainant gave the amount of Rs.8,25,000/- to the accused/petitioner and the accused promised to return the same within a year or so. On 12.12.2015, the accused/petitioner issued a cheque bearing No.069118 for an amount of Rs.8,25,000/- drawn on Axis Bank, Branch Sector 24, Rohini with the assurance that the cheque shall be honoured on its presentation by respondent No.2-complainant. On 18.01.2016, respondent No.2-complainant presented the said cheque to his banker State Bank of India with its branch at Village Chitana, District Sonipat but the manager of said bank asked respondent No.2-complainant to present the cheque in the main branch of State Bank of India, Sonipat. The respondent No.2-complainant presented the cheque in State Bank of India, Sonipat for encashment in his account but the same was dishonoured on the ground of 'funds insufficient' vide cheque return memo dated 19.01.2016 and respondent No.2-complainant received the information regarding the

dishonour of the cheque through registered post on 20.01.2016. The complainant sent a legal notice dated 25.01.2016 through registered post and demanded a sum of Rs.8,25,000/- within a period of fifteen days from the date of receipt of the notice. However, since the accused failed to pay the cheque amount to the complainant-respondent No.2 within the statutory period, respondent No.2-complainant was constrained to file a complaint under Section 138 of the Negotiable Instruments Act, 1881 in which the petitioner-accused was summoned to face the trial.

3. The evidence was led and ultimately, the accused was held guilty and accordingly, convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment for a period of 08 months. The accused/petitioner was also ordered to pay an amount of Rs.10,23,000/- as compensation (cheque amount + interest @ 6 % per annum) to the complainant.

4. Aggrieved against the said judgment of conviction and order of sentence, the accused/petitioner preferred an appeal before the Additional Sessions Judge, Sonapat, which came to be dismissed on 27.01.2022.

5. Against the aforementioned judgment, a revision petition was preferred by the petitioner before this Court bearing No.CRR-656-2022. During the pendency of the said revision petition, a compromise was arrived at between the parties on 18.05.2022. The copy of the settlement/agreement passed by the Mediation and Conciliation Centre of this Court is marked as X in CRR-656-2022 consequent to which in terms of Section 147 of the Negotiable Instruments Act read with Section 320 Cr.P.C., the petitioner was

acquitted by this Court vide judgment dated 11.04.2023 passed in CRR-656-2022.

6. The learned counsel for the petitioner states that once a compromise has been arrived at between the parties pursuant to which he stands acquitted for having committed an offence under Section 138 of the Negotiable Instruments Act, no useful purpose would be served by allowing the present proceedings to continue.

7. The learned State counsel contends that the petitioner was rightly declared a proclaimed person pursuant to which FIR No.123 dated 23.02.2022 under Section 174A IPC at Police Station City Sonipat, Sonipat stands registered against the petitioner.

8. On the other hand The learned counsel for the complainant-respondent No.2 has accepted the factum of a compromise and has stated that he has no objection if the order dated 25.01.2022 (Annexure P-16), consequent FIR No.123 dated 23.02.2022 registered under Section 174A IPC at Police Station City Sonipat, Sonipat and all subsequent proceedings arising therefrom are quashed.

9. I have heard the learned counsel for the parties.

10. 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 vide order dated 25.01.2022 (Annexure P-16) passed during the pendency of the appeal.

11. 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.*

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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.”

12. 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.

13. 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.”

14. 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”.

15. In the present case the proceedings under the Negotiable Instruments Act have culminated in a settlement with the petitioner being acquitted vide judgment dated 11.04.2023 passed in CRR-656-2022.

16. In view of the above, the present petition is allowed and the order dated 25.01.2022 (Annexure P-16) passed by the Additional Sessions Judge, Sonapat, FIR No.123 dated 23.02.2022 registered under Section 174A IPC at Police Station City Sonipat, Sonipat along with all subsequent proceedings arising therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

11.04.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No