

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRM-M-14190-2019

Date of Decision: *February 15, 2023*

Sandeep

... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Chanderhas Yadav, Advocate,
for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Vivek Puri, J.

The petitioner is seeking to quash/set aside the order dated 23.10.2013 passed by the Court of learned Judicial Magistrate First Class, Nuh vide which the he has been declared a proclaimed person, as well as, the FIR bearing No. 222 dated 16.03.2019, under Section 174-A of the Indian Penal Code (for short 'IPC'), registered at Police Station Nuh.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contends that Saroj Bala had instituted a complaint under Sections 138/142 of the Negotiable Instruments Act and Section 420 IPC against the petitioner on account of dishonor of a cheque for Rs. 90,000/- by the banker of the petitioner with

the remarks "Account closed". The petitioner was declared proclaimed person in terms of the order dated 23.10.2013. Subsequently, the complainant moved an application (Annexure P-5) in the trial Court for withdrawal of the complaint on the basis of the compromise. In terms of the order dated 18.03.2019, the complaint was dismissed as withdrawn. An FIR No. 222 dated 16.03.2019, under Section 174-A IPC, has been registered at Police Station Nuh against the petitioner. In view of the amicable settlement between the parties, the aforesaid FIR is liable to be quashed and furthermore, the order declaring the petitioner to be a proclaimed person has been passed by not complying the mandatory provisions of Section 82 of the Code of Criminal Procedure (for short 'the Code').

Learned State counsel has contended that the FIR No. 222, dated 16.03.2019, under Section 174-A IPC has been registered as the petitioner has been declared proclaimed person.

The material on record is indicative of the fact that the complaint under Section 138 of the Negotiable Instruments Act was instituted against the petitioner on account of dishonor of cheque of Rs. 90,000/-. Significantly, the complaint has been withdrawn at a subsequent stage by the complainant vide order dated 18.03.2019.

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:-

“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 (Cr.) 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.”

The dispute with regard to the dishonor of the cheque has been amicably settled between the parties and the complaint has been dismissed as withdrawn. Consequently, it shall be appropriate to quash the order vide which the petitioner has been declared proclaimed person and the FIR, which has been registered under Section 174-A IPC to put a quietus to the entire matter.

The matter has to be viewed from another angle also. Section 82 (1) of the Code provides as following:-

“82. Proclamation for person, absconding -

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) xx xx xx xx”

The perusal of the aforesaid provision makes it amply clear that a period of at least 30 days has to be afforded to the accused for putting appearance in the Court from the date of publishing such proclamation. In the event, the period between the issuance and publication of the proclamation and the specified date of hearing is less than 30 days, the accused cannot be declared a proclaimed person/offender. In this regard, reference can be made to the decisions of the Co-ordinate Bench of this Court rendered in **Ashok Kumar vs. State of Haryana and another, 2013(4) R.C.R. (Criminal) 550, Dilbagh Singh @ Sonu vs. State of Punjab, 2015(8) R.C.R. (Criminal) 166, Sonu vs. State of Haryana, 2021(1) R.C.R. (Criminal) 319** and **Gurpreet Singh vs. State of Punjab, 2022(4) R.C.R. (Criminal) 856.**

Annexure P-3 is the proclamation notice which indicates that the directions were issued to the petitioner to appear in the Court on 24.08.2013 and the publication has been effected on 19.08.2013. In these circumstances, a period of only 5 days has been afforded to the petitioner to put appearance in the Court and as such, the proclamation effected in the instant case cannot be termed to be in compliance with the mandatory provisions of Section 82 of the Code. Consequently, the order dated 23.10.2013 declaring the petitioner as proclaimed person and subsequent proceedings initiated against him under Section 174-A IPC are liable to be set aside.

Keeping in view the aforesaid facts and circumstances emerging in the instant case and in the ends of justice, the petition is allowed and the order dated 23.10.2013 passed by the Court of learned Judicial Magistrate First Class, Nuh, as well as, the FIR bearing No. 222 dated 16.03.2019, under Section 174-A IPC, registered at Police Station Nuh are quashed.

February 15, 2023

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(Vivek Puri)
Judge

Whether reasoned/speaking:	Yes
Whether reportable :	Yes