

CRM-50589-2023
in CRM-M-31767-2017 (O & M)
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-50589-2023 in
CRM-M-31767-2017 (O & M)
Date of decision:07.12.2023

Ramesh Kumar

..... Petitioner

V/s

M/s Indusind Bank Ltd. and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rajesh Gupta, Advocate,
for the applicant-petitioner.

None for respondent No.1-Bank.

Mr. Ravish Kaushik, Addl.A.G., Haryana,
for respondent No.2.

JASJIT SINGH BEDI, J. (Oral)

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This is an application for revival/restoration of the main case which was ordered to be dismissed for non-prosecution vide order dated 31.10.2023.

For the reasons stated in the application, the same is allowed.

The main case is ordered to be restored to its original number and position.

On the request of the learned counsel for the petitioner, the main case is taken up for hearing today itself.

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This is a petition under Section 482 of Cr.P.C. for quashing of the order dated 02.07.2016 (Annexure P-4) vide which the petitioner has been ordered to be summoned through proclamation under Section 82 Cr.P.C., order dated 28.07.2016 (Annexure P-5) vide which the Trial Court had held that the proclamation issued against the petitioner had been received back duly effected and order dated 06.08.2016 (Annexure P-6) vide which the petitioner had been declared a proclaimed person and FIR under Section 174-A IPC which had been ordered to be registered against the petitioner in complaint No.945/2015 dated 16.06.2015 pending adjudication before the Judicial Magistrate Ist Class, Ambala, and all other consequential proceedings arising therefrom.

2. The brief facts of the case are that a complaint under Section 138 of Negotiable Instruments Act was instituted against the petitioner/accused at the instance of the complainant/respondent No.1-Bank through its General Power of Attorney Holder Mr. Yudhvir. As the petitioner/accused did not appear before the Trial Court to face trial, he was declared as a proclaimed person as per the order dated 06.08.2016 (Annexure P-6) pursuant to which an FIR under Section 174-A IPC had been ordered to be registered against him in complaint No.945/2015 dated 16.06.2015 pending before the JMIC, Ambala.

3. Subsequently, the petitioner/accused approached to the complainant, compromised the matter and paid the entire due amount to the

complainant-Bank. Thereafter, the complainant-Bank through its

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representative and Mr. Puneet Sirpaul, Advocate appeared before the Court of Judicial Magistrate Ist Class, Ambala and suffered a statement that as the balance amount had been received from the accused-petitioner, he did not want to proceed further with the complaint under Section 138 of the Negotiable Instruments Act and withdrew the same. Therefore, the complaint in question was dismissed as withdrawn vide order dated 15.02.2018 (Annexure P-8). In view of the dismissal of the complaint under Section 138 of Negotiable Instruments Act on the basis of the compromise, the present petition has been filed for quashing of aforesaid impugned orders dated 02.07.2016 (Annexure P-4), 28.07.2016 (Annexure P-5) and order dated 06.08.2016 (Annexure P-6) alongwith FIR registered under Section 174-A IPC.

4. The learned counsel for the petitioner submits that the present FIR came to be registered against the petitioner due to his non-appearance in the aforementioned complaint. Thereafter, the matter was compromised between the parties and the petitioner- accused had made the payment of the entire due amount to the complainant-Bank. On 15.02.2018, the complainant-respondents No.1 through his counsel got recorded his statement before the Trial Court that since the matter had been compromised between the parties and the complainant-Bank had received the entire due amount, therefore, he did not want to proceed further with the complaint and wanted to withdraw the same. Based on the said statement, the complaint was dismissed as withdrawn vide order dated 15.02.2018 (Annexure P-8).

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5. The learned State counsel for respondent No.2 has opposed the present petition and has submitted that the FIR had been correctly registered.

6. This Court has heard the learned counsel for the petitioner and the learned State counsel and has perused the paper-book.

7. 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 Section 138 of the Act of 1881. The impugned complaint under Section 138 of the Act of 1881 itself has been withdrawn.

8. 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***

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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.”

9. 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 for quashing of the FIR under Section 174-A IPC.

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10. 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.”

11. 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

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Kumar @ Virender Kumar Versus State of Haryana and another, CRM-M-42551-2021 decided on 19.04.2022”.

12. In the present case the proceedings under Section 138 NI Act have culminated in a settlement with the withdrawal of the complaint under Section 138 NI Act.

13. In view of the above, the present petition is allowed and the impugned order dated 02.07.2016 (Annexure P-4) vide which the petitioner has been ordered to be summoned through proclamation under Section 82 Cr.P.C., order dated 28.07.2016 (Annexure P-5) vide which the Trial Court had held that the proclamation issued against the petitioner had been received back duly effected and order dated 06.08.2016 (Annexure P-6) vide which the petitioner had been declared a proclaimed person and the FIR under Section 174-A IPC which had been ordered to be registered against the petitioner in complaint No.945/2015 dated 16.06.2015 and all consequential proceedings arising therefrom are hereby quashed qua the petitioner.

(JASJIT SINGH BEDI)
JUDGE

December 07, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No