

**119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-25977-2023

Date of Decision:22.05.2023

Amit

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aman Arora, Advocate for the petitioner.

Mr. Surender Singh, Assistant Advocate General, Haryana.

HARPREET SINGH BRAR, J. (Oral)

1. Prayer in the instant petition filed under Section 482 Cr.P.C. is for quashing of FIR No. 1133 dated 03.12.2022, under Section 174-A IPC, registered against the petitioner herein at Police Station HTM, Hisar, upon instructions of learned Magistrate, Hisar along with all consequential proceedings arising therefrom.

2. Brief facts leading to lodging of FIR No. 1133 dated 03.12.2022 are that in July, 2019, respondent No.2-Cholamandalam Investment and Finance Limited, instituted a complaint under Sections 138/142 of the Negotiable Instruments Act before learned Judicial Magistrate, Hisar titled as “*Cholamandalam Investment and Finance v. Amit*” bearing case No. NACT-1630-2019 alleging therein that the petitioner approached them for availing loan facility for purchase of a commercial vehicle VF Prime Hyundai bearing registration No.HR 21K-6211. It was agreed that the

petitioner will pay the total amount in equal monthly instalments. The petitioner issued a cheque dated 01.05.2019 in the sum of Rs. 1,64,234/- drawn on Kotak Mahindra Bank, Branch Gandhi Market, Hansi, however, the said cheque was dishonoured on presentation and was returned vide memo dated 16.05.2019 with remarks 'funds insufficient'.

3. Despite issuance of notice by the learned Magistrate, the petitioner did not appear and was declared a proclaimed offender and the learned Magistrate directed the concerned SHO to register an FIR under Section 174-A of IPC against the petitioner. That is how the FIR No.1133 dated 03.12.2022 came to be lodged.

4. On 16.0.2023 vide Annexure P-3 the learned trial Court, on the basis of the compromise and the statement of the authorised person of the complainant-company, ordered that in view of the statement made by the complainant, the present complaint is hereby dismissed as withdrawn.

5. The question which arises for consideration of this Court is whether on account of withdrawal of the complaint under Section 138 of the Negotiable Instruments Act on the basis of compromise, the present FIR deserves to be quashed?

6. The stand of learned counsel representing the petitioner is that the petitioner has been declared a proclaimed offender in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section 82 Cr.P.C. The petitioner has duly paid the amount involved in the cheque in question and both the parties have settled the matter amicably which has resulted in withdrawal of the complaint under

Section 138 of the Negotiable Instruments Act. In the factual backdrop of the case undisputedly, once the substantive offence already stands settled between the petitioner and respondent No.2-company, the continuation of prosecution under Section 174-A of the IPC would be an abuse of the process of law.

7. A Coordinate Bench of this Court in **Vikas Gupta vs. State of Haryana and others**, while quashing the FIR under Section 174-A of the IPC in **CRM-M-19636-2018** decided on 01.08.2018 has observed the following:-

“The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.

8. Similarly in **Microqual Techno Limited and others vs. State of Haryana and another**, 2016(1) ND 181 (P&H): 2015 (32) R.,C.R. (Criminal) 790; **Rajneesh Khanna vs. State of Haryana and another**,

2017(3) L.A.R. 555 and CRM-M-32612 of 2020, Surender Singh vs. State of Haryana and another decided on 12.01.2021, FIR under Section 174-A IPC was quashed on the ground that the main case stood settled amicably.

9. This Court while examining the facts and circumstances of the present case is of the considered opinion that the view taken by the Coordinate Benches of this Court in the aforementioned decisions is correct. Once the substantive offence has been settled through compromise between the petitioner and respondent No.2, the continuation of the proceedings under the impugned FIR would tantamount to an abuse of the process of law.

10. A Coordinate Bench of this Court also took the same view in the case of **Brahul Dureja and another vs. State of Punjab 2022 (1) R.C.R. (Criminal) 248** and held as under:-

“A perusal of the above judgment would show that where FIR has been registered under Section 174-A of the IPC in view of the order passed in the proceedings under Section 138 of the Act of 1881, while declaring the petitioners as proclaimed persons in the said proceedings, a coordinate Bench after relying upon various judgments, had observed that once the accused persons had appeared in the proceedings under Section 138 of the Act of 1881 and had been granted the concession of bail, then the effect of order declaring the accused person as proclaimed person would dissipate and the ground for registration of the FIR under Section 174-A of the IPC would no longer exist and thus, any proceeding under Section 174-A of the IPC would be an abuse of the process of the Court.”

11. Further, in **Ashok Madan vs. State of Haryana and another**

2020 (4) RCR (Criminal) 87, a Coordinate Bench of this Court had held that since the FIR under Section 174-A IPC had been registered only on account of absence of the accused from the proceedings in the main case which had been subsequently regularized by the Court while granting bail to the petitioner, the default stood condoned and, therefore, the FIR deserved to be quashed.

12. Learned counsel representing the State has not been able to controvert the aforesaid facts and the position of law as laid down in the aforesaid judgment.

13. Accordingly the present petition is allowed and FIR No. 1133 dated 03.12.2022, under Section 174-A IPC, registered at Police Station HTM, Hisar, along with all consequential proceedings arising therefrom, is hereby quashed qua the petitioner.

(HARPREET SINGH BRAR)
JUDGE

22.05.2023
sunita

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No