

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

144 (II)

CRM-M-28756-2023 (O&M)

Date of decision: 16.06.2023

Anand Garg

....Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jatin Bansal, Advocate for the petitioner

Mr. Dhruv Sihag, AAG Haryana

AMAN CHAUDHARY. J.

1. The present petition has been filed for quashing of FIR No.1139 dated 26.12.2021 registered under Section 174-A IPC at Police Station Shivaji Nagar, District Gurugram as well he order dated 13.12.2021 passed by the learned Judicial Magistrate First Class, Gurugram vide which the petitioner has been declared proclaimed person.

2. Learned counsel contends that a complaint under Section 138 of the Negotiable Instruments Act was filed against the petitioner wherein he was declared a proclaimed person vide order dated 13.12.2021, Annexure P-2. The matter was amicably settled between the parties on the basis of a tripartite settlement dated 05.01.2020 after which the house of one of the borrowers, that was mortgaged was sold with the permission of respondent No. 2. The respondent assured the parties that all the legal proceedings pending against them would be withdrawn. Thus, he was under the same impression and did not inquire further about the case. Despite this, proceedings were initiated at the address of another borrower and in accordance, summons and bailable warrants were issued against

him. Due to the lack of knowledge of the summoning orders, the petitioner could not cause an appearance in the Court, which led to the passing of the order dated 13.12.2021, declaring him as a proclaimed person and registration of FIR No.1139 under Section 174-A on 26.12.2021. He submits that the petitioner was unaware about the proceedings as the summons were not issued on the correct address and moreover the loan amount stands settled as per the OTS, Annexure P-10 and payment has been made to respondent No.2. He relies on an order passed by this Court dated 01.06.2023, wherein one of the co-borrower in respect of same loan account, who was also declared a proclaimed person and FIR under Section 174-A IPC was registered on 26.12.2021, however, on the basis of the compromise that had been arrived at i.e. the OTS, the FIR in question was quashed. The counsel for respondent No.2 therein, which is the same financial institute as the present complainant-respondent No.2, had appeared and affirmed the fact of compromise having been arrived at between the parties and had no objection to the quashing of FIR. Reliance is placed on **Microqual Techno Limited and others vs. State of Haryana**, 2015(3) R.C.R.(Criminal) 790.

3. Notice of motion.

4. Mr. Dhruv Sihag, AAG, Haryana appears on behalf of the State and affirms the factum of compromise having been arrived at between the parties and has no objection in quashing the FIR in question.

5. Heard.

6. This Court in the case of **Murli Jha vs State of Haryana**, 2021(3) R.C.R.(Criminal) 563, while referring to the judgments in **Microqual Techno Limited** (supra); **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 12.01.2021, quashed the proceedings initiated under Section 174-A IPC by observing that, “I have considered the rival submissions of the parties. The FIR is an outcome of the order declaring the petitioner as a proclaimed person in proceedings initiated under section 138 of NI Act which stands settled, the complaint has been withdrawn and the proceedings against the accused petitioner were dropped. In such circumstances, the continuation of prosecution under Section 174-A IPC in pursuance to orders passed by the trial Court cannot be permitted to continue.”

7. It is pertinent to notice that the petitioner was declared proclaimed person without affecting proper service as no notice or warrant or proclamation was served at the correct address. Further, the respondents had entered into a tripartite settlement agreement with the petitioner who assured him that they will withdraw all the legal proceedings pending against him. Thus, his inability to appear before the trial Court being under the said impression, appears to be a justified explanation.

8. Moreso, the dispute has been resolved as per the OTS, Annexure P-10, the loan amount has been deposited by the petitioner. Further, the FIR under Section 174-A IPC against one of the co-borrower has already been quashed on account of the matter being settled with the loan amount having been paid, wherein the respondent No.2, the same financial institute as the present private respondents had appeared and affirmed the above.

9. The FIR under Section 174A IPC is the consequence of declaring a person as a proclaimed person/offender, as the case may be. The basis of the same is the absence of the concerned from the Court, be it for any reason. Subsequently

it having dawned on such person to join the proceedings; the Court extending him the concession of bail and the complaint itself being satisfied or culminated on any account, can all be factored to conclude that the very purpose of initiation of proclamation proceedings, that is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings pending between the parties, stands nonetheless achieved. In wake of the above, to permit the continuation of the FIR would amount to an abuse of the process of law.

10. In **Jugesh Sehgal vs. Shamsheer Singh Gogi**, (2009) 14 SCC 683, Hon’ble The Supreme Court, with respect to the powers under Section 482 CrPC held that the same need to be exercised, where the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court.

11. Considering the facts and circumstances of the present case in light of the afore-referred judgments, this Court finds no justifiable reason to continue with the proceedings in the FIR.

12. Resultantly, the order dated 13.12.2021 passed by the learned Judicial Magistrate First Class, Gurugram is set aside and FIR No.1139 dated 26.12.2021 registered under Section 174-A IPC, at Police Station Shivaji Nagar, District Gurugram is quashed, subject to deposit of Rs.25,000/- with the Poor Patients Welfare Fund, PGIMER, Chandigarh.

(**AMAN CHAUDHARY**)
JUDGE

June 16, 2023

M.Kamra

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No