

CRM-M-41654-2022 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41654-2022 (O & M)

Date of decision:18.05.2023

Aneel Sahni

..... Petitioner

V/s

U.T. Chandigarh and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Shadab Ahmad, Advocate, for the petitioner.

Mr. Yashwant Singh Rathore, Addl.P.P.
with Ms. Sudha Singh, Advocate,
for respondent No.1-U.T., Chandigarh.

Mr. A.K. Kansal, Advocate,
for Mr. Devanshu Verma, Advocate,
for respondent No.2.

JASJIT SINGH BEDI, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing of the order dated 06.01.2020 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Chandigarh in Criminal Complaint No.13282-2017 whereby the petitioner has been declared a proclaimed person and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that in a Criminal Complaint No.13287 of 2017 under Section 138 read with Section 141 and 142 of the Negotiable Instruments Act, 1881 against the petitioner-Aneel Sahni and

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Trial before the Court of Judicial Magistrate Ist Class, Chandigarh. Initially, the petitioner was appearing regularly till 30.04.2019, but on 07.05.2019, he could not appear as he was suffering from medical ailments. Thereafter, the petitioner did not appear before the Trial Court as he was under the impression that the matter was being handled by his counsel. As the petitioner/accused did not appear before the Trial Court to face Trial, he was declared a proclaimed person vide order dated 06.01.2020 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Chandigarh.

3. The present petition has been filed impugning the order dated 06.01.2020 (Annexure P-4) whereby the petitioner has been declared a proclaimed person.

4. On 01.03.2023, the following order was passed in this case:-

“The learned counsel for the petitioner submits that he wishes to explore the possibilities of a settlement.

Notice of motion for 22.03.2023.

On asking of the Court, Mr. Kirat Singh Sidhu, DAG, Punjab, accepts notice on behalf of the respondent-State.

The parties are directed to appear before the Mediation and Conciliation Centre of this Court to explore the possibility of a settlement on 10.03.2023.

A photocopy of this order be placed on the files of other connected matters.”

5. Pursuant to the aforesaid order, a compromise came to be effected between the parties in the present petition (CRM-M-41654-2022) as well as in the connected petition bearing No. CRM-M-41617-2022 titled as

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dated 29.03.2023 alongwith the settlement agreement have been received. The same are placed on record of the file of the present petition (CRM-M-41617-2022).

6. The learned counsel for the petitioner has apprised the Court that the complaint bearing Registration No.11128/2017 Filing No.13282/2017 and CNR No.CHCH03-013287-2017 stands dismissed as withdrawn vide order dated 15.05.2023 passed by the Judicial Magistrate Ist Class, Chandigarh. He contends that as the aforesaid criminal complaint wherein the impugned order (Annexure P-4) came to be passed, has since been dismissed as withdrawn, therefore, the impugned order dated 06.01.2020 (Annexure P-4) and the subsequent proceedings arising therefrom ought to be quashed.

5. The learned State counsel has opposed the present petition and has submitted that the impugned order has rightly been passed.

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 criminal 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:-

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“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.*

xxx xxx xxx

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.”

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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.

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.

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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 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 order dated 06.01.2020 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Chandigarh in Criminal Complaint No.13282-2017 whereby the petitioner has been declared a proclaimed person and all subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

(JASJIT SINGH BEDI)
JUDGE

May 18, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No