

CRM-M-42914-2022 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42914-2022 (O & M)

Date of decision:18.05.2023

Ved Parkash Verma and anr.

..... Petitioners

V/s

U.T. Chandigarh and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sanjiv K. Yadav, Advocate, for the petitioners.

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 06.03.2019 (Annexure P-8) passed by the Judicial Magistrate Ist Class, Chandigarh, in Criminal Complaint bearing Registration No.11127/2017(Annexure P-2) whereby the petitioners have been declared a proclaimed person and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that a Criminal Complaint bearing Registration No.11127 of 2017 (Annexure P-2) under Section 138 read with Section 141 and 142 of the Negotiable Instruments Act, 1881 was filed against the petitioners (Ved Praksh Verma and Kalpana Devi Verma)

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and others for dishonouring of the cheque in question. The petitioners alongwith others came to be summoned vide order dated 26.10.2017 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Chandigarh. The petitioners-Ved Prakash Verma and Kalpana Devi Verma being NRIs were not aware of the pendency of any case against them. On 15.04.2022, when the petitioners came to India to sell their properties, they came to know about the pendency of the present complaint and the proceedings initiated against them under Section 83 Cr.P.C. by the Trial Court. Since the petitioners did not appear in the aforementioned complaint under Section 138 of the Negotiable Instruments Act, they were declared proclaimed persons vide order dated 06.03.2019 (Annexure P-8).

3. The present petition has been filed impugning the order dated 06.03.2019 (Annexure P-8) whereby the petitioners had been declared proclaimed persons.

4. The learned counsel for the petitioners submits that a compromise has been effected between the parties. He contends that pursuant to the aforesaid settlement, the criminal complaint bearing Registration No.11127/2017, Filing No.13281/2017 and CNR No.CHCH03-013286-2017 wherein the impugned order (Annexure P-8) came to be passed, stands dismissed as withdrawn vide order dated 15.05.2023 passed by the Judicial Magistrate Ist Class, Chandigarh. He, therefore, prays that the impugned order dated 06.03.2019 (Annexure P-8) and the subsequent proceedings arising therefrom ought to be quashed.

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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:-

“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*

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

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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. Therefore, the other prayers made in the present petition for quashing of the complaint under Section 138 of the Negotiable Instruments Act (Annexure P-2) and the summoning order dated 26.10.2017 (Annexure P-4) do not survive.

13. In view of the above, the present petition is allowed. The order dated 06.03.2019 (Annexure P-8) whereby the petitioners have been declared proclaimed persons and all subsequent proceedings arising therefrom are hereby quashed qua the petitioners.

(JASJIT SINGH BEDI)
JUDGE

May 18, 2023
sukhpreet

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