

CRM-M-41773-2023
2023:PHHC:110311

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

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CRM-M-41773-2023
Date of decision: 23.08.2023

Aditya Yadav

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Chandan Singh, Advocate, for the petitioner.

AMAN CHAUDHARY. J.

1. The present petition has been filed for quashing of order dated 29.01.2015, Annexure P-2, passed by the Judicial Magistrate First Class, Gurgaon vide which the petitioner has been declared as proclaimed person in complaint case No.NACT/7017/2014, titled as 'Indiabulls Housing Finance Ltd. vs. Aditya Yadav' and for quashing of FIR No.946, dated 18.11.2021, registered under Section 174-A IPC, Annexure P-3, at Police Station Shivaji Nagar, Gurugram.

2. Learned counsel contends that the petitioner is the sole proprietor of M/s Life Style Kitchens, Gurgaon and had taken a loan of Rs.40,40,000/- from respondent No.2, under their scheme of loan and had started paying the installments. At the time of availing the loan, the petitioner had also handed over blank cheques to the respondent-bank as per their demand. He had paid around Rs.85 lacs against loan of Rs.40,40,000/-, but due to some unavoidable

circumstances he failed to make payments for few instalments and had also informed the Bank regarding the same, but they, without even informing the petitioner, presented the blank cheques for a sum of Rs. 42,22,000/- however, the same got dishonored and a complaint under Sections 138, 141 and 142 of NI Act was filed. The petitioner was not served in the complaint, regarding which, the reference is made to the zimni orders and was declared a proclaimed person without complying with the mandatory provisions of Section 82 CrPC in letter and spirit. The petitioner was never in the knowledge of the above complaint filed against him by the respondent. The FIR under Section 174A was registered after 6 years and 9 months, whereupon he came to know of it in March, 2023, when one officer came to inquire about him at the residential house. Upon the above, the petitioner immediately contacted the respondent No.2 and apprising it that more 70 lac had been paid by him but was informed that some amount was still pending, whereafter a full and final settlement towards towards foreclosure of loan was made vide Annexure P-4, dated 31.03.2023. Consequently, the complaint, Annexure P-1 was got dismissed as withdrawn by respondent No.2 vide order dated 10.04.2023, Annexure P-5.

3. Notice of motion.

4. Mr. Jagdish Manchanda, Additional AG Haryana, appears on receipt of advance notice and has no objection to the prayer made in the present petition.

5. In view of the nature of order which this Court proposes to pass, there is no necessity of calling upon any response from respondent No.2, as no order prejudicial to the rights of any party is being passed.

6. Heard.

7. It is apposite to refer to the order dated 10.04.2023, Annexure P-5, passed by the trial Court, whereby the complaint in question itself was ordered to be withdrawn, which reads thus:

“Main file received. It be restored to its original number. File taken up today in Daily Lok Adalat. Ld. Counsel for com- plainant has suffered a statement that he does not want to pursue further with the present complaint and on the instruction of the complainant company he withdraws the present complaint.

In view of his statement, present complaint stands dismissed as withdrawn. Proceeding against accused stands dropped. File be consigned to record room after due compliance.”

8. In **Baldev Chand Bansal vs. State of Haryana and another**, CRM-M-43813-2018, decided on 29.01.2019, this Court quashed the FIR registered under Section 174-A IPC in pursuance of the settlement arrived at between the parties, and held thus:

“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.

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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. In similar set of facts and circumstances, while placing reliance on the judgments of **Microqual Techno Ltd. vs. State of Haryana**, 2015 (32) RCR (Criminal) 790; **Rajneesh Khanna vs. State of Haryana and another**, 2017 (3) L.A.R. 555, CRM-M32612 of 2020, **Surender Singh vs. State of Haryana and another** decided on 12.01.2021, the proceedings initiated under Section 174-A IPC, were quashed by this Court in the case of **Murli Jha vs. State of Haryana** 2021(3) R.C.R.(Criminal) 563, by observing therein 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.”

10. In the present case, the petitioner was declared a proclaimed person, pursuant to which the impugned FIR was registered after more than 6 years and the main complaint itself stood withdrawn, hence this Court finds no justifiable reason to continue with the proceedings in the FIR in question, which are liable to be quashed in exercise of power under Section 482 CrPC, as held in **Jugesh Sehgal vs. Shamsher Singh Gogi**, (2009) 14 SCC 683,

being an abuse of the process of the court.

11. Accordingly, the present petition is allowed. The impugned order dated 29.01.2015 passed by the Judicial Magistrate First Class, Gurgaon and the resultant FIR No.946, dated 18.11.2021, registered under Section 174-A IPC at Police Station Shivaji Nagar, District Gurugram, are hereby quashed.

(AMAN CHAUDHARY)
JUDGE

23.08.2023
Ankur

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