

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

(263)

**CRM-M-43631-2019 (O&M)
Date of Decision:-02.03.2023**

AKASH JOSHI & ANOTHER

.....Petitioners

Versus

STATE OF HARYANA & ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rajesh, Advocate for the petitioners.

Mr. Neeraj Poswal, Asstt. A.G., Haryana.

None for respondent No.2.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the petition under Section 482 of Cr.P.C. for quashing of the FIR No.1431 dated 01.08.2019 (Annexure P-1) registered under Section 174-A of IPC at Police Station Shivaji Nagar, District Gurugram which was registered consequent to the order dated 13.06.2019 passed by the Judicial Magistrate, 1st Class, Gurugram (Annexure P-4) declaring the petitioners as proclaimed persons in a complaint case under Section 138 Negotiable Instruments Act, 1881.

The brief facts of the case are that in discharge of their legal liability, the petitioners/accused issued a cheque bearing No.503918 dated 30.05.2016 for an amount of Rs.1,09,365/- drawn on Axis Bank Ltd., Sector 62, Noida, U.P. in favour of respondent No.2-complainant. The said cheque came to be dishonoured. Pursuant thereto, as no payment was made in lieu of the dishonoured cheque, a complaint under Section 138 of

Negotiable Instruments Act came to be instituted against the petitioners/accused and they were summoned to face trial. Subsequently, they were declared proclaimed persons vide order dated 13.06.2019 (Annexure P-4). Pursuant to the said order, an FIR No.1431 dated 01.08.2019 (Annexure P-1) registered under Section 174-A of IPC at Police Station Shivaji Nagar, District Gurugram came to be registered against them.

Thereafter, a compromise was effected between the parties and the complaint was ordered to be dismissed as withdrawn in terms of the orders dated 13.09.2019 and 14.09.2019 (Annexures P-3 colly). In view of the dismissal of the complaint under Section 138 of Negotiable Instruments Act on the basis of the compromise, the present petition for quashing of the aforesaid order dated 13.06.2019 (Annexure P-4) passed by the Judicial Magistrate, 1st Class, Gurugram and the consequential FIR (Annexure P-1) has been filed.

The learned counsel for the petitioners/accused submits that they had wrongly been declared proclaimed persons and on learning about the same, the petitioners compromised the matter with the complainant/respondent No.2. Thereafter, on 13.09.2019 and 14.09.2019 (Annexures P-3 colly), the counsel for respondent No.2-complainant in the Trial Court got recorded his statement that as per his instructions, the complainant did not want to proceed further with the present complaint and wanted to withdraw the same. Based on the said statement, the complaint was ordered to be dismissed as withdrawn on 13.09.2019 and 14.09.2019 (Annexures P-3 colly).

The learned State counsel has opposed the present petition and

has submitted that the FIR has been correctly registered.

This Court has heard the learned counsel for the parties and has perused the paper-book.

From the above-said facts and circumstances, it is apparent that the present FIR was registered in view of the fact that the petitioners were declared as proclaimed persons in the proceeding under the Negotiable Instruments Act, 1881. The impugned complaint itself has been withdrawn.

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 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.”

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 quashing of the FIR under Section 174-A IPC.

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.”

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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In the present case the proceedings under the Negotiable Instruments Act have culminated in a settlement with the withdrawal of the complaint.

In view of the above, the present petition is allowed and the FIR No.1431 dated 01.08.2019 (Annexure P-1) registered under Section 174-A of IPC at Police Station Shivaji Nagar, District Gurugram which was registered in consequent to the order dated 13.06.2019 passed by the Judicial Magistrate, 1st Class, Gurugram (Annexure P-4) declaring the petitioners as proclaimed persons in a complaint case under Section 138 Negotiable Instruments Act, 1881 is hereby quashed.

02.03.2023

Jitesh

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No