

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

CRM-M-50548-2022

Date of Decision: 21.02.2023

KRISHAN

....Petitioner

Versus

STATE OF HARYANA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Tejas Bansal, Advocate and
 Mr. Sanjiv Kumar Aggarwal, Advocate
 for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana,

Mr. Subhash Chander, Reader, Grade-3,
Court of Judicial Magistrate Ist Class, Safidon-
respondent No.2 -in person.

HARSH BUNGER, J. (Oral)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.64 dated 14.03.2020 (Annexure P-2) registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station City Safidon, District Jind, along with all the consequential proceedings, which was registered on account of declaration of petitioner as a proclaimed person by the learned Judicial Magistrate First Class, Safidon, vide order dated 03.03.2020 (Annexure P-1) in compliant No. NACT/118/2018 titled as “HDFC Bank Ltd. Versus Krishan Kumar”.

Learned counsel for the petitioner has submitted that a complaint under Section 138 of the Negotiable Instruments Act was filed at the behest of complainant-Bank against the present petitioner, wherein the petitioner was wrongly declared as a proclaimed person vide order dated 03.03.2020 (Annexure P-1) and an intimation regarding the said order was sent by the Judicial Magistrate Ist Class, Safidon to the Station House

Officer concerned to register an FIR in respect of the same. In pursuance of the said intimation, the FIR (Annexure P-2) was registered against the petitioner. It is submitted that during pendency of the present case, the matter got amicably settled between the petitioner and complainant-Bank and subsequent thereto, learned counsel appearing for complainant-Bank (HDFC Bank Ltd.) before the Judicial Magistrate Ist Class, Safidon, suffered a statement before the said Court not to pursue the Complaint No. NACT/118/2018 and sought withdrawal of the same. On the basis of said statement, the Judicial Magistrate First Class, Safidon, granted permission to withdraw the said complaint vide its order dated 04.10.2022 (Annexure P-4). It is further submitted that once the complaint under Section 138 of the Negotiable Instruments Act has been withdrawn, the present FIR under Section 174-A of the Indian Penal Code deserves to be quashed.

Learned State counsel has not disputed the fact that the complaint (No. NACT/118/2018) stands withdrawn vide order dated 04.10.2022 (Annexure P-4), passed by the Judicial Magistrate Ist Class, Safidon, however he opposes the prayer of petitioner for quashing of FIR.

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

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.

xxx xxx xxx

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.

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.”

In case titled as “**Ashok Madan vs. State of Haryana and another**” reported as 2020(4) RCR (Criminal) 87, it is 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.”

Another co-ordinate Bench of this Court in a case bearing CRM-M-14623-2021 titled as “**Deepak vs. State of Haryana and another**”, decided on 17.02.2022, has held as under:-

“...Since, the proceedings under Section 138 of the Act of 1881 has been withdrawn and the present FIR has been registered on account of non-appearance of the petitioner, this Court feels that continuance of the proceedings in the present FIR would be an abuse of process of the Court.

Keeping in view the abovesaid facts and circumstances, as well as the authorities of law referred to above, the present petition is allowed and FIR No.969 dated 04.11.2018 registered under Section 174-A of IPC at Police Station Ballabgarh City, District Faridabad (Annexure P-3) and all the consequential proceedings arising therefrom, are ordered to be quashed qua the petitioner...”

A perusal of the above referred judgments would manifest that where an FIR under section 174-A of Indian Penal Code was registered consequent upon declaration of the accused in the proceedings under Section 138 of the Negotiable Instruments Act as “Proclaimed Person”, then upon subsequent withdrawal of proceedings under Section 138 of the Negotiable Instruments Act on the basis of an amicable settlement, it has been observed that the continuation of proceedings under Section 174-A IPC shall be an abuse of the process of court.

In the present case, it is not in dispute that the complainant-Bank had filed a complaint under Section 138 of the Negotiable Instruments Act and it is in the said proceedings that the petitioner was declared as proclaimed person by the trial Court and as a consequential action thereof, the present FIR No.64 dated 14.03.2020 (Annexure P-2), was registered under Section 174-A of the Indian Penal Code, at Police Station City Safidon, District Jind. Thereafter, the matter was compromised between the parties and complainant had withdrawn the complaint under Section 138 of the Negotiable Instruments Act as per order dated 04.10.2022 (Annexure P-4), which is reproduced hereinbelow:-

“Today the case was fixed for evidence of complainant as well

as for amended title.

2. At the same time Sh. R.K. Attri, Advocate for complainant appeared and suffered a statement to the effect that as per instructions of complainant Bank he does not want to proceed further with the present complaint and withdraws the same.

3. Heard. **In view of statement suffered by learned counsel for complainant, the present complaint is hereby dismissed as withdrawn.** File be consigned to record room after due compliance.

(Jyoti Sandhu)
CJ (JD), Safidon.
UID No.HR-0427”

Thus, after the withdrawal of proceedings under Section 138 of the Negotiable Instruments Act on the basis of amicable settlement, continuation of proceedings under Section 174-A of the Indian Penal Code shall be an abuse of process of law.

Keeping in view the abovesaid facts and circumstances, as well as the authorities of law referred to above, the present petition is allowed and FIR No.64 dated 14.03.2020 registered under Section 174-A of the Indian Penal Code, 1860 at Police Station City Safidon, District Jind and all the consequential proceedings arising therefrom, are ordered to be quashed qua the petitioner.

Present petition is disposed of in the aforesaid terms.

All pending application(s), if any, shall stand disposed of.

21.02.2023

Himani/Apurva

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No