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

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CRM-M-50335-2022

Date of decision : 11.09.2023

Karambir**..... Petitioner****versus****State of Haryana and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Rahul Vats, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

None for respondent No.2.

PANKAJ JAIN, J. (Oral)

Prayer is for quashing of FIR No.289 dated 22.12.2021, registered for offence punishable under Section 174-A of IPC, 1860 at Police Station Pillu Khera, District Jind.

2. Petitioner was summoned to face trial for offence punishable under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') vide order dated 23.12.2016 placed on record as Annexure P-2.

3. On 06.04.2017, trial Court passed the following order:-

“Notice issued to accused received back unserved. Postal receipt placed on record. It seems that accused in avoiding the service. Now, he be summoned through bailable warrants for 30.05.2017.”

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4. The bailable warrants also could not be executed and the Court after trying, ordered that the presence of the petitioner be procured through non-bailable warrants vide order dated 30.04.2018. Thereafter, even the non-bailable warrants remained unexecuted and proceedings under Section 82 Cr.P.C. were initiated and the proclamation was ordered to be issued for 26.07.2019 vide order dated 29.04.2019 which finally resulted in the order dated 10.10.2019 and the petitioner was declared as 'proclaimed person' leading to registration of the impugned FIR.

5. Counsel for the petitioner submits that the petitioner was in judicial custody from 29.09.2019 till 20.04.2020 in FIR No.326/19 registered for offence punishable under Section 379-B of IPC read with Section 25 of the Arms Act at Police Station Kharkhoda.

6. The precise contention that is being raised is that at the time the petitioner was required to respond to the proclamation and to appear before the Court i.e. on 10.10.2019, he was in judicial custody and thus was suffering from legal handicap. Apart from relying upon the aforesaid circumstances to contend that the proclamation order which is basis of impugned FIR itself cannot be sustained. Counsel further submits that in the trial for offence punishable under Section 138 of the N.I. Act, the petitioner has earned acquittal vide judgment dated 08.12.2022 passed by JMIC, Safidon, wherein the Court observed as under:-

“xx xx xx

14. In view of my above mentioned observations and discussions, despite the fact that amount of Rs.8,50,000/- has been paid by the complainant to

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the accused through his account and further the cheque issued by accused in favour of complainant was dishonoured due to **funds insufficient**, the accused Karambir cannot be held guilty for commission of offence under Section 138 of N.I. Act as there was never a legal liability existing of accused to pay the complainant and the cheque has never been issued towards the payment of legally recovery debt. Therefore, accused namely Karambir is hereby **acquitted and the complaint is hereby dismissed.**”

7. He thus submits that once the petitioner has earned acquittal in the principal offence punishable under Section 138 of the N.I. Act, present FIR registered for offence punishable under Section 174-A of IPC which came into being after the petitioner was declared proclaimed person from the trial under Section 138 of the N.I. Act cannot be allowed to continue.

8. Reliance is being placed upon order dated 28.05.2019 passed in **CRM-M-51783-2018**, titled as **‘Ashok Madan vs. State of Haryana and another’**, wherein Coordinate Bench of this Court framed the following question:-

“4. Now the question which arises before this Court as to whether the proceedings under Section 174-A IPC should be allowed to continue or not?

9. The aforesaid question was answered as under:-

“5. In the considered view of this Court, once the order declaring the petitioner as proclaimed person ceases to exist on account of the fact that he was later on granted bail by the learned trial court and he continued to put in appearance, in such

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circumstances, the FIR which was registered consequently upon declaring the petitioner as proclaimed person is also required to be closed.

6. No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174-A IPC 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 proceeding under Section 174-A IPC shall be abuse of the process of court.”

10. Co-ordinate Bench of this Court in **CRM-M-43813- 2018** titled as **“Baldev Chand Bansal Vs. State of Haryana and another”** vide order dated 29.01.2019, which 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***

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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.”

11. Same is the view of another Co-ordinate Bench in the **“Ashok Madaan vs. State of Haryana and another”** reported as **2020 (4) RCR (Criminal) 87**, wherein it has been held that:

“No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174-A 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

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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.”

12. Keeping in view the facts and circumstances of the present case and in view of the principles settled by this Court, the present petition is allowed. FIR No.289 dated 22.12.2021, registered for offence punishable under Section 174-A of IPC, 1860 at Police Station Pillu Khera, District Jind, thus cannot be allowed to continue and the same is ordered to be quashed qua the petitioner.

(PANKAJ JAIN)
JUDGE

11.09.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No