

2023:PHHC:144513

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-50862 of 2023
Date of Decision: 15.11.2023

Sukanta Kumar Sahoo

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Rajiv Kumar Saini, Advocate for
Mr. Bhim Singh, Advocate, for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C., with a prayer to quash the order dated 17.05.2018 (Annexure P-3), whereby, the present petitioner has been declared as a proclaimed offender in a complaint case No. 44104 of 2016, CIS No. 15122/2016 dated 06.12.2016 and CNR No. HRGR03-040955-2016 titled as “**M/s Khamdhenu Ltd. Vs. M/s Dhadu Bhai Hardware Paints & Sanitary Pvt. Ltd**” filed under Section under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') pending in the Court of Judicial Magistrate 1st Class, Gurugram. A further prayer has been made to quash the FIR No. 526 dated 23.12.2018 under Section 174-A IPC registered at

Police Station DLF Phase-I, Gurugram (Annexure P-4) and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that the petitioner had purchased the paint products from M/s Kamdhenu Ltd. (Paints Division), Gurugram and in discharge of that liability, he had issued a cheque amounting to Rs. 95,808/- to him, however, on presentation the said cheque was not honoured and accordingly the complainant filed a criminal complaint bearing No. 44104 of 2016, CIS No. 15122/2016 dated 06.12.2016 and CNR No. HRGR03-040955-2016 titled as **“M/s Khamdhenu Ltd. Vs. M/s Dhadu Bhai Hardware Paints & Sanitary Pvt. Ltd”** in the Court of Judicial Magistrate 1st Class, Gurugram (Annexure P-1). After the issuance of the process, the petitioner was declared to be a proclaimed person vide order dated 17.05.2018 (Annexure P-3) in the above said complaint.

3. Learned counsel for the petitioner contends that from the orders dated 05.07.2017, 23.08.2017, 10.10.2017, 01.12.2017 and 25.01.2018, it is established that the summons/warrants were never served on the present petitioner. By referring to the said orders, the learned counsel contends that on number of occasions, summons/bailable warrants/non-bailable warrants were issued to secure the presence of the petitioner. However, these were never served on the present petitioner. He further contends that the petitioner was not aware of the pendency of the criminal complaint

(Annexure P-1) and he could not appear before the trial Court. Ultimately, vide the impugned order dated 17.05.2018 (Annexure P-3), the petitioner was declared to be a proclaimed person and the FIR No. 526 dated 23.12.2018 under Section 174-A Police Station DLF Phase-I, Gurugram (Annexure P-4) was also ordered to be registered against the present petitioner. After lodging of the FIR (Annexure P-4), the petitioner received a phone call from the police station and came to know about the pendency of the criminal complaint under Section 138 of the Act against him. He further contends that on coming to know about the pendency of the complaint, he requested the complainant to withdraw the complaint as he was ready to make the payment. Consequently, the complainant had withdrawn the complaint on 09.09.2023. It was specifically mentioned by the trial Court in the order dated 09.09.2023 (Annexure P-5) that the complainant had suffered a statement that he did not want to proceed further with the complaint as the same had been compromised. Learned counsel further contends that the very purpose of the impugned FIR was to procure the presence of the petitioner and since the main matter has already stands compromised between the parties, the proceedings arising out of the impugned order (Annexure P-3) and the FIR (Annexure P-4) are liable to be quashed by this Court.

4. 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.”

5. 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.

6. 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.”

7. In the present case also, the main case has already been withdrawn by the complainant. Consequently, the continuation of the proceedings arising from the impugned order dated 17.05.2018 (Annexure P-3) and the FIR No. 526 dated 23.12.2018 under Section 174-A IPC, registered at Police Station DLF Phase-I, Gurugram (Annexure P-4) would be an abuse of process of the Court. Similar observations have been made by this Court in the matter of **“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”.**

8. In view of the above, the present petition is allowed and impugned order dated 17.05.2018 (Annexure P-3) and the FIR No. 526 dated 23.12.2018 under Section 174-A IPC, registered at Police Station DLF Phase-I, Gurugram (Annexure P-4) alongwith all subsequent proceedings arising therefrom are hereby ordered to be quashed.

15.11.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

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Yes/No