

285

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-50802 of 2023
Date of Decision: 13.12.2023

JAGDISH ANEJA

... Petitioner

Versus

STATE OF PUNJAB AND ANR.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. N.K.Khepar, Advocate for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Mahipal Yadav, Advocate, for respondent No.2.

SANJIV BERRY, J. (ORAL)

The instant petition has been preferred by the petitioner under Section 482 of the Code of Criminal Procedure for seeking quashing of order dated 02.07.2022 (Annexure P-2) passed by learned Judicial Magistrate First Class, Patiala in Complaint bearing No. COMA/530/2019 dated 15.02.2019 (Annexure P-1) registered under Section 138 of Negotiable Instrument Act and FIR (Annexure P-3) and all subsequent proceedings resulting therefrom :-

FIR No.	Dated	Sections	Police Station
89	24.06.2023	174-A IPC	Division 4, District Patiala

2. In nutshell, the brief facts of the case are that Neetu-

respondent-complainant No.2 is a proprietor of firm namely New Subham Enterprises, near Bir Ji Marian, Swaran Vihar, Patiala which deals with baby feeder products, filed a criminal complaint stating that complainant purchased baby feeder products from the M/s Bonne Care Private Limited accused-petitioner on different occasion but the complainant returned the above said articles and demanded the amount paid against them. Petitioner-accused issued cheques which were dishonoured. Aggrieved complainant filed Complaint No. COMA/530/2019 dated 15.02.2019 (Annexure P-1) under Section 138 of the Negotiable Instrument Act against the petitioner titled as *New Shubham Enterprises through Prop Neetu Vs M/s Bonne Care Private Limited through Ashok Aneja etc.* Vide impugned order dated 02.07.2022 (Annexure P-2) passed by Judicial Magistrate First Class, Patiala, petitioner was declared as proclaimed person and SHO concerned was directed to pursue the procedure 174-A Cr.P.C and FIR No. 89 dated 24.06.2023(Annexure P-3) was registered against the petitioner and hence the petition for quashing of the impugned order as well as all consequential proceedings arising therefrom.

3. It is, inter alia, contended by learned counsel for the petitioner that the complaint under Section 138 of Negotiable Instruments Act was filed by respondent No.2 against the petitioner wherein the petitioner was never served and ultimately vide order dated 02.07.2022 (Annexure P-2), he was declared as proclaimed person in this case. He further submits that subsequently vide order dated 09.09.2023 (Annexure P-5), the aforesaid complaint had been compromised and withdrawn by respondent No.2 and

the petitioner was discharged from the proceedings of the case. He submits that the impugned order (Annexure P-2) is *per se* illegal having been passed in violation of the proceedings under Section 82 Cr.P.C. and the consequent FIR (Annexure P-3) registered on the basis of the impugned order after one year thereof, is also liable to be set aside. He further submits that original proceedings i.e. the aforesaid complaint has already come to an end on the basis of compromise, therefore, present proceedings under Section 174-A IPC should also come to an end. He has referred to the judgments cited as *Murli Jha vs. State of Haryana, 2021(3) R.C.R. Criminal 563; Sher Singh Rana vs. State of Haryana and another 2023(1) R.C.R. (Criminal) 185; Randhir Singh Tyagi vs. State of Haryana and another 2022(3) DCR 469; Nirmal Singh Vs. State of Haryana and others 2023 (244) AIC 676 and Luxmi Devi vs. State of Haryana and another, 2021(1) L.A.R 310;* to argue that since the main complaint filed under Section 138 of the Negotiable Instrument Act has been withdrawn by the complainant on the basis of amicable settlement, therefore, the present proceedings arising out of the FIR No. 89 dated 24.06.2023 (Annexure P-3) under Section 174-A IPC shall be quashed and consequential proceedings arising therefrom be also set aside.

4. The learned State counsel has filed the reply dated 12.12.2023 by way of affidavit of Deputy Superintendent of Police City-1, District Patiala and submits that the petitioner had been declared as proclaimed person by the competent Court, and present FIR was lawfully registered against the petitioner. However, he admitted the factum of compromise and

withdrawal of complaint under Section 138 of the Negotiable Instrument Act, against the petitioner vide order dated 09.09.2023 (Annexure P-5).

5. Mr. Mahipal S. Yadav, Advocate has put in appearance on behalf of Complainant-respondent No.2 and filed Vakalatnama. The same is taken on record. He submits that the matter has been compromised between the parties and statement in this regard had been made vide Annexure P-4 dated 09.09.2023 and vide Annexure P-5 dated 09.09.2023 aforesaid complaint has been dismissed as withdrawn.

6. I have heard the respective submission made by the learned counsels, representing the petitioner and the State.

7. After considering the rival contentions and perusing the record, it is not disputed that a complaint (Annexure P-1) was filed under Section 138 of the Negotiable Instrument Act against the petitioner and the present petitioner was declared proclaimed person vide order dated 02.07.2022 (Annexure P-2) in the said complaint and on the basis thereof, the impugned FIR No. 89 dated 24.06.2023 (Annexure P-3) was registered against him. It is not disputed that the aforesaid complaint has since been withdrawn by the complainant vide order dated 09.09.2023 (Annexure P-5) on the basis of amicable settlement between the parties. It is the case of the petitioner that summons were not served to him properly and the subsequent proceedings resulting him to be declared as proclaimed person. It has been held in the judgments referred to above that when the main complaint in which the petitioner has been declared proclaimed person have been withdrawn on the basis of amicable settlement then continuation with the

proceedings under Section 174-A IPC would be nothing but the abuse of the process of law.

8. Therefore, considering the facts and circumstances of the present case, without going into the controversy as to whether the petitioner was aware of the proceedings going against him under the Negotiable Instrument Act or not; the fact remains that the petitioner had been declared as proclaimed person in the complaint referred to above vide the impugned order dated 02.07.2022 and the complaint has already been dismissed as withdrawn vide order dated 09.09.2023 (Annexure P-5), meaning thereby with the dismissal of the complaint the impugned order passed during the course of proceedings of the complaint had already stood culminated, therefore, the registration of the present FIR on the basis of above said order declaring the petitioner as proclaimed person would not serve any purpose and keeping the said FIR and consequent proceedings alive after the dismissal of the complaint would not serve any purpose but would be abuse of process of law.

9. Consequently, keeping in view the above said facts and circumstances, the present petition is allowed, impugned FIR No.89 dated 24.06.2023 registered under Section 174-A IPC at Police Station Division 4, District Patiala (Annexure P-3) as well as the order dated 02.07.2022 (Annexure P-2) passed by the learned Judicial Magistrate First Class, Patiala whereby the petitioner was declared a proclaimed person in complaint No. COMA/530/2019 titled as *New Shubham Enterprises through Prop Neetu Vs M/s Bonne Care Private Limited through Ashok Aneja etc.*

(Annexure P-1) and all consequential proceedings arising therefrom are hereby set aside.

10. Petition stand allowed.

(SANJIV BERRY)
JUDGE

13.12.2023

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |