

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-59179-2022
Date of Decision: 14.02.2023

Umardaraz and others

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Kamlesh, Advocate for
Mr. Sukhdeep Singh, Advocate
for the petitioners.

Mr. Ram Kumar Singla, DAG, Haryana.

HARSH BUNGER J. (ORAL)

Present petition under Section 482 of the Code of Criminal Procedure has been filed on behalf of the petitioners seeking quashing of FIR No.139 dated 17.03.2021 (Annexure P-2), under Section 174-A of the Indian Penal Code, registered at Police Station Civil Lines, District Karnal, on the basis of the fact that Complaint No.312 of 2017 dated 13.02.2017 (Annexure P-1), titled as “*M/s Nuova Proteins (P) Limited Vs. Umardaraz and others*” filed under Sections 138/142 of the Negotiable Instruments Act, has been withdrawn by the complainant-Company.

Learned counsel for the petitioners has submitted that in the present case, a complaint under Section 138/142 of the Negotiable Instruments Act was filed at the behest of complainant-Company, i.e. M/s

cheque and in the said complaint, the petitioners were wrongly declared as proclaimed persons by the trial Court and an FIR in respect of the same was ordered to be registered against the petitioners, whereupon the present FIR was registered. It is submitted that during pendency of the present case, the matter got amicably settled between the petitioners and complainant-Company and subsequent thereto, the authorized person, namely Prem Sharma, partner of the complainant-Company (M/s Nuova Proteins Pvt. Ltd.), suffered a statement before the Judicial Magistrate Ist Class, Karnal, not to pursue the Complaint No.312 of 2017 dated 13.02.2017 (Annexure P-1) and sought withdrawal of the same. On the basis of said statement, the Judicial Magistrate First Class, Karnal, granted permission to withdraw the said complaint vide its order dated 23.03.2021 (Annexure P-3). It is further submitted that once the complaint under Section 138/142 of the Negotiable Instruments Act has been withdrawn, the present FIR under Section 174-A of the Indian Penal Code deserves to be quashed.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 submitted an affidavit dated 11.02.2023 of Mr. Mukesh Kumar, H.P.S., Deputy Superintendent of Police (HQ), Karnal, in Court today, which is taken on record, subject to all just exceptions. Learned State counsel, though opposes the plea of petitioners made in the present petition, however, he fairly concedes the fact that Complaint No.312 of 2017 dated 13.02.2017 stands withdrawn vide order dated 23.03.2021, passed by the Court of Judicial Magistrate Ist Class, Karnal.

I have heard learned counsel for the parties and have perused

the paper book.

A co-ordinate Bench of this Court vide order dated 29.01.2019, passed in **CRM-M-43813-2018** titled as “**Baldev Chand Bansal vs. State of Haryana and another**”, 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 174-A 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 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 under Section 174-A 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 174-A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

Another co-ordinate Bench of this Court vide order dated 17.02.2022, passed in **CRM-M-14623-2021**, titled as **“Deepak vs. State of Haryana and another”**, 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 the Indian Penal Code was registered

Section 138/142 of the Negotiable Instruments Act as 'Proclaimed Persons' then upon subsequent withdrawal of proceedings under Section 138/142 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 of the Indian Penal Code shall be an abuse of the process of Court.

In the present case, it is not in dispute that the complainant-Company had filed a complaint under Section 138/142 of the Negotiable Instruments Act for dishonour of cheque and it is in the said proceedings that the petitioners were declared as proclaimed persons by the trial Court and as a consequential action thereof, the present FIR No.139 dated 17.03.2021 (Annexure P-2), was registered under Section 174-A of the Indian Penal Code, at Police Station Civil Lines, District Karnal. Thereafter, the matter was compromised between the parties and complainant had withdrawn the complaint under Section 138/142 of the Negotiable Instruments Act as per order dated 23.03.2021 (Annexure P-3), which is reproduced hereinbelow:-

“Present: Sh. A.K. Kundu, counsel for complainant.

File put up before me, in view of order vide endorsement No.1066-70 dated 29.01.2021 by Learned District & Sessions Judge, Karnal as Ms. Suman Patlain, Judicial Magistrate 1st Class has proceeded on maternity leave for six months from 11.12.2020.

An application for putting up the case file for today and for withdrawal of case. File has been received from record-room. It be restored. Complainant has suffered a statement that the matter has been compromised with accused and he does not want to proceed further with the present complaint, same may kindly be dismissed as withdrawn. Heard. Keeping in view the above statement of

complainant, present complaint is hereby dismissed as withdrawn. File be consigned to record room after due compliance. File be sent back to the court concerned.

*Pronounced in open Court (Harleen Pal Singh)
Dated: 23.03.2021 Judicial Magistrate Ist Class
Karnal.UID No.HR-0390(D)”*

Thus, after the withdrawal of proceedings under Section 138/142 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 aforementioned facts and circumstances, as well as the authorities of law referred to above, the present petition is allowed and FIR No.139 dated 17.03.2021 (Annexure P-2), under Section 174-A IPC, registered at Police Station Civil Lines, District Karnal is quashed qua the petitioners, subject to payment of Rs.5,000/-, as cost, by the petitioners to be deposited with the **“Punjab and Haryana High Court Bar Association Lawyers' Family Welfare Fund”, Account No.41564846387, S.B.I. High Court Branch.**

Present petition is disposed of in the aforesaid terms.

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

14.02.2023

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No