

125

2024:PHHC:011681

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4293-2024
DECIDED ON: 29.01.2024

RAKESH KUMAR AND ANOTHER

.....PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Intizar Ul Hasan, Advocate
for the petitioners.

SANDEEP MOUDGIL, J

1. The instant petition under Section 482 Cr.P.C has been filed seeking quashing of FIR No. 46, dated 05.02.2023 (Annexure P-1), under Section 174-A IPC, Police Station Sarai Khawaja, District Faridabad and order dated 04.03.2023 (Annexure P-2) passed by learned Judicial Magistrate Ist Class vide which the complaint filed against the petitioners has been dismissed as withdrawn.
2. Brief facts of the case are that respondent No.2 filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioners on account of dishonouring of a cheque.
3. During the pendency of the said complaint the petitioner no.2 was declared as proclaimed person vide order dated 27.01.2023 and it was

also directed that an FIR be got registered in this regard under Section 174-A IPC.

4. In pursuance to the said order, the impugned FIR No.46, dated 05.02.2023 (Annexure P1) was registered against the petitioners.

5. Learned counsel for the petitioners submits that the dispute between the petitioners and respondent No.2 stands amicably settled and on 04.03.2023, Counsel for the complainant appeared and suffered a statement before the Trial Court on the instructions of complainant with regard to the withdrawal of the present complaint. Thus, the complaint was dismissed as withdrawn due to dispute being compromised vide order dated 04.03.2023. He submits that in view of the withdrawal of main complaint case, the order declaring the petitioners as proclaimed persons along-with FIR No. 46, dated 05.02.2023, under Section 174-A IPC registered at Police Station Sarai Khawaja, District Faridabad, Haryana is liable be quashed.

6. Learned counsel for the petitioners has placed reliance upon the orders dated 20.07.2022 and 24.08.2022 respectively, passed by a co-ordinate Bench of this Court in CRM-M-46062-2017, titled as ***“Jatin Dhawan and another versus State of Haryana and another”*** and CRM-M-12534-2022, titled as ***“Krishan Kumar versus State of Haryana and another”***, wherein it has been held that once the main case is dismissed as withdrawn, the continuation of proceedings under Section 174-A IPC shall be an abuse of process of law.

7. 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 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 174A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

8. In the present case the complaint under Section 138 of the Act of 1881 has been dismissed as withdrawn. Once the impugned complaint has been dismissed as withdrawn and all the accused stand acquitted, then the continuance of the prosecution in the FIR lodged under Section 174-A of IPC would be an abuse of the process of Court.

9. Keeping in view the above-said facts and circumstances, the present petition is allowed and FIR No. 46, dated 05.02.2023 (Annexure P-1) registered under Section 174-A IPC at Police Station Sarai Khawaja, District Faridabad with all the subsequent proceedings arising therefrom, are hereby quashed qua the petitioners.

(SANDEEP MOUDGIL)
JUDGE

29.01.2024
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*