2024:PHHC:106073

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

283/25 **CRM M-20027 of 2024**
Date of Decision: 19.07.2024

Radhika Chanana ...Petitioner

Vs.

State of Haryana and another ...Respondent

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

Present : Mr. Pranay Chitale, Advocate
for the petitioner (through VC).

Mr. Rajinder Kumar Banku, 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 FIR No. 0246 dated 17.03.2019 registered under Section 174-A of IPC (Annexure P-1) at Police Station Panipat and all consequential proceedings arising therefrom.

2. Learned counsel for the petitioner contends that respondent No. 2/complainant had filed a criminal complaint bearing No. NACT-2600-2017 titled as ***"M/s Wadhwa Trading Co. Vs. Amira Pure Foods Pvt. Ltd. and others"*** under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') against the present petitioner in the Court of Judicial Magistrate 1st Class. After the preliminary evidence, the summons were issued for the service of the petitioner. The proclamation under Section 82

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Cr.P.C. was issued against the petitioner, requiring her to appear before the trial Court. In fact, the Judicial Magistrate 1st Class had no basis for concluding that the petitioner was intentionally absconding, in absence of any material on record. The petitioner was residing at United Arab Emirates from 08.12.2015 to 07.12.2018, which was apparent from the documents (Annexure P-3 to Ex.P-5). Learned counsel further submits that vide order dated 25.01.2019, the petitioner was declared as proclaimed person. Thereafter, the FIR FIR No. 0246 dated 17.03.2019 under Section 174-A of IPC (Annexure P-1) Police Station Panipat was ordered to be registered against the petitioner. Learned counsel submits that in 2019, when the petitioner came to know about the pendency of the complaint, she filed a quashing petition CRM M-55046-2019 for quashing of the complaint and the summoning order. Vide order dated 21.07.2022 (Annexure P-2), the complaint under Section 138 of the Act and summoning order were ordered to be quashed by this Court. Learned counsel further contends that the very purpose of the impugned FIR was to procure the presence of the petitioner and since the main complaint filed under Section 138 of the Act and summoning order have already been quashed by this Court, the proceedings arising out of the FIR (Annexure P-1) are an instrument of the abuse of the process of law and are liable to be quashed by this Court.

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3. 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.*
>
> *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 174A of IPC shall be nothing but an abuse of the process of law.*
>
> *xxx xxx xxx*
>
> *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*

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> *Indian Penal Code at Police Station Sector-5, Panchkula and all other subsequent proceedings arising thereof, are hereby quashed."*

4. 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.

5. 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*

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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."

6. This Hon'ble Court has held in the matter of ***Jaskaran Singh Vs. State of Punjab, 2022 SCC Online P&H 3214*** as follows:-

10. A perusal of the same would show that where the substantive proceedings, wherein the order declaring the accused-petitioner as proclaimed person was passed, have already been amicably resolved amongst the parties, resulting in withdrawal of the complaint or the quashing of the proceedings, the FIR registered under Section 174-A IPC, as a result of certain interim order passed in criminal proceedings, have also been quashed. The object being to secure presence of an accused and to establish rule of law so that the proceedings could be finalized. Once the parent dispute stands amicably resolved, the proceedings initiated as a result of intermediary orders would not sub-serve any interest of justice. The proceedings under Section 138 of the Negotiable Instruments Act being quasi-criminal, the object is to resolve the dispute and when such an object is served, the Court should adopt a liberal approach towards the accused who has already redressed the grievance of the complainant.

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> *11. Without going into the controversy as to whether the service was correctly and properly effected upon the petitioner in the instant case or not at this stage, and after noticing that the main case already stands settled in view of compromise executed between the parties and the complaint having been withdrawn, the registration of the instant FIR, that is only an outcome of the proceeding held in the said compliant, would not serve any purpose by keeping the present FIR and other proceedings alive."*

7. In the present case also, the complaint alongwith the summoning order was ordered to be quashed by this Court vide order dated 21.07.2022 (Annexure P-2). Consequently, the continuation of the proceedings arising out of order dated 25.01.2019 and FIR No. 0246 dated 17.03.2019 registered under Section 174-A of IPC, Police Station Panipat (Annexure P-1) 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. Furthermore, Section 82 of the Cr.P.C provides for the proclamation for the persons absconding from the process of law and the same has been reproduced below:-

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"82. Proclamation for person absconding. *--*

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house; (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day."

However, by way of Section 12 of Act No.25 of 2005, subsections (4) and (5) were also inserted in Section 82

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Cr.P.C. w.e.f. 23.06.2006 vide notification No.S.O.923(E) dated 21.06.2006, which reads as under:

"[(4) Where a proclamation published under subsection (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.]

[(5). The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]"

9. From a bare perusal of the abovesaid provision, it is clear that in case, the Court has reasons to believe that any person against whom a warrant had been issued by it, had absconded or was concealing himself so that such warrant could not be executed, such Court might publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. In the present case, the warrants were sent for the service of the petitioner but the perusal of the documents (Annexure P-3 to P-5), it is evident that petitioner was residing at United Arab Emirates from 08.12.2015 to 07.12.2018. Accordingly, proclamation was issued by the Court without serving

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the petitioner. Thus, it is apparent that the mandatory provision of Section 82 of Cr.P.C was not complied and the proclamation was wrongly issued by the trial Court.

10. In view of the above, the present petition is allowed and order dated 25.01.2019 and FIR No. 0246 dated 17.03.2019 registered under Section 174-A of IPC Police Station Panipat (Annexure P-1) alongwith all subsequent proceedings arising therefrom are hereby ordered to be quashed.

19.07.2024 **(N.S.SHEKHAWAT)**

amit rana **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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