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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-52578-2023 in/and
CRM-M-13314-2022
Date of Decision:21.03.2024

Vinod Kumar Swami ...Petitioner

Vs.

State of Haryana and another ...Respondents

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

Present: Mr. Sandeep Kumar Yadav, Advocate
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

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

N.S.SHEKHAWAT, J. (Oral)

CRM-52578-2023

1. This application has been filed under Section 482 Cr.P.C. for placing on record copy of affidavit dated 11.11.2022 as Annexure P-6, passed by Lok Adalat Judge, Narunaul, whereby the petitioner was acquitted.
2. For the reasons mentioned in the application the same is allowed as prayed for subject to all just exceptions.

CRM-M-13314-2022

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure with a prayer to quash the FIR No.657 dated 30.09.2021 registered under Section 174-A of IPC, at Police Station City Narnaul, District Mahendergarh (Anneuxre P-1) and order dated 24.09.2013,

passed by the Learned Judicial Magistrate 1st Class, Narnaul (Anneuxre P-2), whereby the petitioner was declared to be the proclaimed offender.

2. Learned counsel for the petitioner contends that a complaint under Sections 138 and 142 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') filed by respondent No.2/complainant against the present petitioner. In the said complaint, the present petitioner was ordered to be summoned to face the trial under Sections 138 and 142 of the Act. Even the trial Court had issued summons/warrants against the present petitioner. However, the said summons/warrants were never served on the present petitioner due to the incorrect address and the present petitioner was declared to be proclaimed offender and he came to know about the pendency of the proceedings after a gap of 08 years. He further contends that present petitioner has been wrongly declared proclaimed offender as the case filed under Sections 138 and 142 of the Act a person may be declared as proclaimed person only. During the pendency of the present petition, before this Court, the parties have amicably settled their dispute before the Lok Adalat, Narnaul and the appeal filed by the petitioner before the Appellate Court was accepted vide order dated 11.11.2022 (Annexure P-6) and judgment of conviction dated 16.09.2022 and order of sentence dated 17.09.2022 were ordered to be set aside. Thus, no purpose would be served by keeping the proceedings in pursuance of the FIR No.657 dated 30.09.2021 registered under Section 174-A of IPC, at Police Station City Narnaul, District Mahendergarh (Anneuxre P-1) and order dated 24.09.2013, passed by the Learned Judicial Magistrate 1st Class, Narnaul (Anneuxre P-2), alive.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the present petitioner had intentionally not appeared before the trial Court and has been rightly declared as a proclaimed offender, whereas, the matter has been amicably resolved between the parties before the Lok Adalat, Narnaul and the learned counsel appearing for respondent No.2 submits that he has no objection in case the FIR No.657 dated 30.09.2021 registered under Section 174-A of IPC, at Police Station City Narnaul, District Mahendergarh (Anneuxre P-1) and order dated 24.09.2013, passed by the Learned Judicial Magistrate 1st Class, Narnaul (Anneuxre P-2), and all subsequent proceedings are ordered 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 Sections 138 and 142 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 Sections 138 and 142 of the Act stands amicable settled 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 regularized 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, the parties have compromised the matter and appeal preferred by the petitioner has been accepted by the Lok Adalat, Narnaul. Consequently, the continuation with the FIR No.657 dated 30.09.2021 registered under Section 174-A of IPC, at Police Station City Narnaul, District Mahendergarh (Anneuxre P-1) and order dated 24.09.2013, passed by the Learned Judicial Magistrate 1st Class, Narnaul (Anneuxre P-2), 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. Still further, from a reading of the provisions of Section 82 of Cr.P.C., it is evident that all the persons, who are absconding or concealing themselves so that the warrants may not be executed, cannot be declared as proclaimed offender. Only where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under the offences mentioned in Section 82(4) Cr.P.C. and such person fails to appear at the specific place and time required by the proclamation, the Court may pronounce such person as proclaimed offender. However, if the proclamation is respecting the offence, other than the offences mentioned in Section 82(4) Cr.P.C., then

such persons, who are absconding and concealing themselves to affect the execution of warrants of arrest, could be declared as proclaimed persons. From a plain reading of the provisions of Section 82 of Cr.P.C., it is evident that there is a distinction between a proclaimed person and a proclaimed offender. The said distinction is further reinforced by the provisions of Section 174-A IPC. As per Section 174-A IPC, if a person is declared as “proclaimed person” then he shall be punished with imprisonment for a term, which may extend to three years and or fine or both and where a declaration has been made in sub-section 4 of Section 82 Cr.P.C. pronouncing him as a “proclaimed offender”, he shall be punished with the imprisonment for a term which may extend to seven years and shall also be liable to fine. Thus, from the scheme of Code itself, it is evident that the words “Proclaimed Person” and “Proclaimed Offender” have different meanings and different punishments have been provided under the statute for the said violation of law.

9. From the above referred discussion, it is evident that the trial Court had wrongly declared the petitioner as a ‘proclaimed offender’ and he could only be declared as a ‘proclaimed person’ at the most. Even, on this count also, the impugned order dated 24.09.2013 (Anneuxre P-2), passed by the Learned Judicial Magistrate 1st Class, Narnaul and FIR No.657 dated 30.09.2021 registered under Section 174-A of IPC, at Police Station City Narnaul, District Mahendergarh (Anneuxre P-1) are liable to be quashed.

10. In view of the above, the present petition is allowed and the FIR No.657 dated 30.09.2021 registered under Section 174-A of IPC, at Police Station City Narnaul, District Mahendergarh (Anneuxre P-1) and order dated 24.09.2013, passed by the Learned Judicial Magistrate 1st Class, Narnaul

(Anneuxre P-2), alongwith all subsequent proceedings arising therefrom are hereby ordered to be quashed.

11. Pending application(s), if any, shall also stand disposed of.

21.03.2024
M.Sikka

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No