

2024:PHHC:090014



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116+268

CRM M-15508 of 2023 (O&M)
Date of Decision: 17.07.2024

Lalit Kumar ...Petitioner
Versus
Prem Sukh Lal ... Respondent

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

Present : Mr. J.S. Yadav, Advocate, for the petitioner.
Ms. Sheenu Sura, 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 order dated 03.10.2022 (Annexure P-9), whereby, the present petitioner has been declared as a proclaimed person in a complaint case No. 101/2020 dated 10.06.2020 titled as “ **Prem Sukh Lal Vs. Kunal Enterprises and another**”, which was filed under Section under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') in the Court of Sub Divisional Judicial Magistrate, Bawal. A further prayer has been made to quash all other proceedings emanating from the said order.
2. The brief facts of the case are that the respondent No. 1 had filed a complaint under Section 138 of the Act against the present petitioner for dishonour of a cheque bearing No. 020762 dated

18.02.2020 amounting to Rs. 16,96,282/-, which was issued by the petitioner in favour of the respondent. After filing of the complaint, the summoning order dated 04.02.2021 (Annexure P-2) was passed by the trial Court and the summons were issued for the service of the petitioner. However, the petitioner was never served. Thereafter, the bailable warrants were issued on 09.03.2021 and even the non-bailable warrants were also issued on 19.08.2021. However, the warrants issued to the petitioner were received back unserved. Thereafter, the proceedings under Section 82 Cr.P.C. were initiated against the present petitioner and even the proclamation warrants issued under Section 82 of the Cr.P.C. against the petitioner were received back unserved. Finally, on 03.10.2022, the petitioner was declared as a proclaimed person. Even, the trial Court had directed the SHO concerned to register a case under Section 174-A IPC and to file the list of immovable and moveable properties of the petitioner.

3. Learned counsel for the petitioner contends that the petitioner was not aware of the said proceedings and he came to know about the pendency of the present case on 12.10.2022. He further contends that the summons/warrants had been issued at the address of the company and during the Covid period, the petitioner had shifted the company at his residence and had changed the address. Consequently, the petitioner never received any summons/warrants/proclamation and his non-appearance was unintentional and bonafide. Learned counsel further contends that

when the petitioner came to know about the pendency of the complaint before the trial Court, he immediately approached the respondent and made the entire payment to the respondent/complainant. Consequently, on 25.01.2023 (Annexure P-10), the counsel for respondent No. 1 made a statement that he wanted to withdraw the complaint as the petitioner had made the entire payment. Ultimately, vide order dated 11.02.2023 (Annexure P-11), the Court of Sub-Divisional Judicial Magistrate, Bawal, permitted the respondent/complainant to withdraw the complaint in the present case. Learned counsel for the petitioner further contends that the very purpose of the impugned FIR was to procure the presence of the petitioner and since the main matter already stands compromised between the parties, the proceedings arising out of the impugned order dated 03.10.2022 (Annexure P-9) are liable 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 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.

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 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.”

7. In the present case also, the main case has already been withdrawn by the complainant. Consequently, the continuation of the proceedings arising from the impugned order dated 03.10.2022 (Annexure P-9) 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. In view of the above, the present petition is allowed and impugned order dated 03.10.2022 (Annexure P-9) alongwith all subsequent proceedings arising therefrom including FIR No. 0019 dated 19.01.2023 under Section 174-A IPC, Police Station Bawal, District Rewari is hereby ordered to be quashed.

9. CRM 21134 of 2023 stands allowed, accordingly.

10. Pending applications, if any, are disposed off, accordingly.

17.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No