

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-22770 of 2023
Date of Decision: 13.03.2024

Vipul Gupta ...Petitioner
Vs.
State of Punjab and another ...Respondents

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

Present : Mr. L.S. Lakhanpal, Advocate, for the petitioner.
Mr. Jasjit Singh, DAG, Punjab.
Mr. A.S. Sandhu, Advocate, for the respondent No. 2.

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 17.12.2022 passed by the Chief Judicial Magistrate, Mansa (Annexure P-5), in complaint bearing No. NACT 111/2019 titled as “**Gurvinder Singh Vs. Vipul Gupta**”, under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**'), whereby, the petitioner was declared to be a “proclaimed offender” and also to quash the FIR No. 276 dated 20.12.2022 under Section 174-A of IPC (Annexure P-6) registered at Police Station City-2, Mansa, District Mansa and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contends that Gurvinder Singh-respondent No. 2 had filed a complaint under Section 138 of the Act, i.e., NACT 111/2019, titled as “**Gurvinder Singh Vs. Vipul Gupta**”, in the Court of Chief Judicial Magistrate, Mansa. Vide order dated 11.03.2019 (Annexure P-1), the petitioner was ordered to be summoned by the Chief Judicial Magistrate, Mansa. Thereafter, the case was listed for appearance of the petitioner for 22.04.2019. On 22.04.2019, bailable warrants were issued by the Court of Chief Judicial Magistrate, Mansa. However, the petitioner was not served. Again, on 07.01.2020, non-bailable warrants were ordered to be issued against the petitioner. Thereafter, vide order dated 17.12.2022, the petitioner was ordered to be declared as ‘proclaimed offender’. Learned counsel for the petitioner contends that from the various orders passed by the trial Court, it is established that summons/warrants were never served on the petitioner. Even, the petitioner was not aware of the pendency of the complaint before the trial Court and he could not appear before the trial Court. Later on, FIR No. 276 dated 20.12.2022 under Section 174-A of IPC (Annexure P-6) was ordered to be registered at Police Station City-2, Mansa, District Mansa against petitioner and the police started raiding his house. Consequently, the petitioner came to know about the pendency of the proceedings against him and he compromised the case with respondent No. 2. On 02.03.2023, the respondent No. 2 made a statement that the matter had been settled with the accused and he

wanted to withdraw the complaint. Consequently, vide order dated 02.03.2023 (Annexure P-7), the respondent No. 2 was permitted to withdraw the complaint. Learned counsel further contends that the very purpose of the impugned FIR was to procure the presence of the petitioner and since the main matter has already been compromised between the parties, the proceedings arising out of the impugned order dated 17.12.2022 (Annexure P-5) and the FIR No. 276 dated 20.12.2022 under Section 174-A of IPC (Annexure P-6) are liable to be quashed. Apart from that, learned counsel further contends that the petitioner has been wrongly declared as a “proclaimed offender”.

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.

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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.”

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 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. 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 17.12.2022

(Annexure P-5) and FIR No. 276 dated 20.12.2022 under Section 174-A of IPC (Annexure P-6) registered at Police Station City-2, Mansa, District Mansa 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”.**

7. 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.

8. 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 17.12.2022 (Annexure P-5) and FIR No. 276 dated 20.12.2022 under Section 174-A of IPC (Annexure P-6) registered at Police Station City-2, Mansa, District Mansa, are liable to be quashed.

9. In view of the above, the present petition is allowed and impugned order dated 17.12.2022 (Annexure P-5) and the FIR No. 276 dated 20.12.2022 under Section 174-A of IPC registered at Police Station City-2, Mansa, District Mansa (Annexure P-6)

alongwith all subsequent proceedings arising therefrom are hereby
ordered to be quashed.

13.03.2024

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

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Yes/No

Whether reportable

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Yes/No