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CRM-M-21147-2024

Date of Decision: 29.04.2024

Satyendra Singh Tomar and another

...Petitioners

VS.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Kamal Kapoor, Advocate
for the petitioners.

N.S.Shekhawat J. (Oral)

1. The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure with a prayer to quash the FIR No.0432 dated 07.05.2023 (Annexure P-3), registered under Section 174-A of IPC, at Police Station Hisar Sadar, District Hisar and further to quash order dated 03.04.2023 (Annexure P-2) vide which, the petitioners were declared as proclaimed persons in Complaint No.CIS No.2650 of 2018 titled as Lt. Col. Aditya Kumar Vs. M/s Proplarity Infratech Pvt. Ltd. and others as well as all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioners contends that a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') filed by the complainant against the present petitioners. In the said complaint, the present petitioners were ordered to be summoned to face the trial under Section 138 of the Act. Even the trial Court had issued summons/warrants against the present petitioners, however, the said

summons/warrants were never served on the present petitioners due to wrong address given by the complainant. He next contends that after the registration of the FIR, the petitioners came to know about the pendency of the proceedings registered under Section 138 of the Act against them and they immediately entered into a compromise with the complainant. They settled all their disputes with the complainant vide Annexure P-4 and the complainant had withdrawn the complaint registered under Section 138 of the Act (Annexure P-5). Learned counsel for the petitioners further contends that the present petitioners were declared to be a proclaimed persons only to procure their presence before the trial Court, whereas, the matter has been amicably resolved between the parties and the complaint filed under Section 138 of the Act has already been withdrawn by the complainant. No purpose would be served by keeping the proceedings in pursuance of the FIR No.0432 dated 07.05.2023 (Annexure P-3), registered under Section 174-A of IPC, at Police Station Hisar Sadar, District Hisar (Annexure P-3) alive.

3. Notice of motion.

4. On the asking of the Court, Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana, who is present in the Court, accepts notice on behalf of respondent-State and Mr. Sidhant Bhonsle, Advocate, accepts notice on behalf of the complainant.

5. Learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioners on the ground that the present petitioners had intentionally not appeared before the trial Court and has been rightly declared as a proclaimed persons, whereas, the learned counsel appearing for the complainant submits that the complainant has already

withdrawn the complaint registered under Section 138 of the Act from the Court of Judicial Magistrate 1st Class, Hisar on 08.11.2023 and he has no objection in case the FIR No.0432 dated 07.05.2023 (Annexure P-3), registered under Section 174-A of IPC, at Police Station Hisar Sadar, District Hisar and order dated 03.04.2023 (Annexure P-2) vide which, the petitioners were declared as proclaimed persons as well as all subsequent proceedings are ordered to be quashed by this Court.

6. 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.”

7. 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.

8. 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.”

9. In the present case also, the main case has already been withdrawn by the complainant. Consequently, the continuation with the FIR No.0432 dated 07.05.2023 (Annexure P-3), registered under Section 174-A of IPC, at Police Station Hisar Sadar, District Hisar 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”.

10. In view of the above, the present petition is allowed and the FIR No.0432 dated 07.05.2023 (Annexure P-3), registered under Section 174-A of IPC, at Police Station Hisar Sadar, District Hisar and the order dated 03.04.2023 (Annexure P-2) vide which, the petitioners were declared as proclaimed persons in Complaint No.CIS No.2650 of 2018 titled as Lt. Col. Aditya Kumar Vs. M/s Proplarity Infratech Pvt. Ltd. and others as well as all subsequent proceedings arising therefrom are hereby ordered to be quashed.

29.04.2024.
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(N.S.SHEKHAWAT)
JUDGE

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