

CRM-M-26396-2024 (O & M)

2024:PHHC:074440



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(125)

CRM-M-26396-2024 (O & M)
Date of decision:24.05.2024

Nitin Jain Petitioner
V/s
State of Haryana and anr. ...Respondents

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Manish Bansal, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Ms. Diksha Sharma, Advocate, for respondent No.2.

JASJIT SINGH BEDI, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing of FIR No.182 dated 05.11.2019 under Section 174-A IPC registered at Police Station B.P.T.P., Faridabad (Annexure P-6) as well as all subsequent proceedings arising therefrom including the final report dated 10.04.2021 under Section 173 Cr.P.C. (Annexure P-9) presented in case No.CHI/1990/2021 titled as ‘State versus Nitin Jain’ and order dated 18.10.2019 (Annexure P-5) whereby the petitioner was declared a proclaimed person in a criminal complaint bearing registration CIS No.NACT/4220/2016 (complaint No.RBT-1473 of 2016) titled as ‘M/s Sri Hydraulics versus M/s Jai Gurudev Enterprises Etc.’.



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2. The brief facts of the case are that a complaint under Section 138 of Negotiable Instruments Act was instituted against the accused-petitioner/Nitin Jain being the Proprietor of M/s Jai Gurudev Enterprises at the instance of the complainant-respondent No.2/Ritu Bhatia, Proprietor of M/s Sri Hydraulics. Initially, the accused-petitioner had put in appearance before the Trial Court and was granted the concession of bail. Thereafter, the petitioner did not appear and vide order dated 04.07.2017 his bail was cancelled and surety bonds stood forfeited to the State. Ultimately, the petitioner was declared a proclaimed person by the Trial Court vide order dated 27.09.2018, pursuant to which an FIR bearing No.36 dated 07.10.2018 under Section 174-A IPC, Police Station B.P.T.P., Faridabad had been ordered to be registered against the petitioner. The said FIR stands quashed vide order dated 09.05.2024 passed by this Court in CRM-M-22993-2024 (Annexure P-15).

On 26.11.2018, the petitioner appeared before the Trial Court and submitted an application for surrender-cum-bail. Subsequently, he was released on bail vide order dated 26.11.2018 (Annexure P-2) passed by the Court of Judicial Magistrate Ist Class, Faridabad.

Thereafter, on 20.08.2019, the petitioner did not appear before the Trial Court and his bail order was again cancelled by vide order dated 20.08.2019. On 18.10.2019, the petitioner was declared a proclaimed person vide order, Annexure P-5 passed by the Judicial Magistrate Ist Class, Faridabad, pursuant to which, the present FIR bearing No.0182 dated



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05.11.2019 under Section 174-A IPC, Police Station B.P.T.P., Faridabad (Annexure P-6) had been ordered to be registered against the petitioner. Thereafter, the petitioner was arrested and granted bail vide order dated 02.03.2021 passed the Judicial Magistrate Ist Class, Faridabad. He faced Trial and on conclusion thereof came to be convicted and sentenced to undergo simple imprisonment for a period of one year and was directed to pay compensation to the tune of Rs.22,00,000/- to the complainant/respondent No.2.

3. Aggrieved against the said judgment dated 04.03.2021 passed by the Trial Court, the accused-petitioner preferred an appeal bearing No.CRA/66/2021. In the meantime, a final report dated 10.04.2021 under Section 173 Cr.P.C. (Annexure P-9) was presented in the FIR No.182 dated 05.11.2019 under Section 174-A IPC (Annexure P-6).

4. During the pendency of the proceedings in the appeal i.e. CRA/66/2021, the petitioner/accused approached the complainant and compromised the matter, pursuant to which an application seeking leave to compound the offence was filed on 06.03.2024. The aforesaid application was accepted by the Appellate Court and vide order dated 07.03.2024, the offence under Section 138 of the Negotiable Instruments Act, 1881 stood compounded. A copy of the order dated 07.03.2024 passed by the Sessions Judge, Faridabad is attached as Annexure P-12 to the present petition.

5. The learned counsel for the petitioner submits that the present FIR came to be registered against the petitioner due to his non-appearance



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during the course of the Trial in the complaint under Section 138 of the Negotiable Instruments Act, 1881. Thereafter, the matter was compromised between the parties and the offence under Section 138 of the Negotiable Instruments Act stood compounded in terms of the judgment dated 07.03.2024 passed by the Sessions Judge, Faridabad.

6. The learned State counsel has opposed the present petition and has submitted that the FIR had been correctly registered.

7. The learned counsel for the complainant-respondent No.2 accepts the factum of compromise having been arrived at between the parties and has no objection if the FIR in question and the subsequent proceedings arising therefrom are quashed.

8. This Court has heard the learned counsel for the parties and has perused the paper-book.

9. From the above-said facts and circumstances, it is apparent that the present FIR was registered in view of the fact that the petitioner was declared as a proclaimed person in the proceeding under Section 138 of the Act of 1881. The judgment of conviction and order of sentence dated 04.03.2021 passed by the Trial Court has been set aside and the offence in question stands compounded in terms of the judgment dated 07.03.2024 (Annexure P-12) passed by the Sessions Judge, Faridabad.

10. 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:-



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“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.*

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



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11. 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 for quashing of the FIR under Section 174-A IPC.

12. 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.



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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.”

13. A perusal of the relevant extract of the above judgment would show that where the main case was dismissed for want of prosecution, it was observed that the continuation of proceedings under Section 174-A IPC shall be an abuse of the process of court. A similar view has been expressed by this Court in “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”.

14. In the present case the proceedings under Section 138 NI Act have culminated in a settlement with the compounding of the offence under Section 138 of the Negotiable Instruments Act in terms of the judgment dated 07.03.2024 (Annere P-12).

13. In view of the above, the present petition is allowed and subject to a deposit of Rs.25,000/- as costs with Punjab and Haryana High Court Bar Association, Chandigarh, Account No.65035682434, SBI High Court Branch, IFSC:-SBIN0050306, the impugned FIR No.182 dated 05.11.2019 under Section 174-A IPC registered at Police Station B.P.T.P., Faridabad (Annexure P-6) and all subsequent proceedings arising therefrom



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(Annexure P-9) presented in case No.CHI/1990/2021 titled as ‘State versus Nitin Jain’ and order dated 18.10.2019 (Annexure P-5) whereby the petitioner was declared a proclaimed person in a criminal complaint bearing registration CIS No.NACT/4220/2016 (complaint No.RBT-1473 of 2016) titled as ‘M/s Sri Hydraulics versus M/s Jai Gurudev Enterprises Etc are hereby quashed qua the petitioner only.

(JASJIT SINGH BEDI)
JUDGE

May 24, 2024
sukhpreet

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