

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.123

CRM-M-30607-2024(O&M)
Date of decision : 10.07.2024

Karam Chand

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON’BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Vivek Goyal, Advocate, for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

KIRTI SINGH, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 08.03.2022 (Annexure P1) passed by the learned Addl. Session Judge, Kurukshetra whereby surety bonds furnished by the petitioner/surety for appellant/convict were forfeited and amount of surety bonds i.e. Rs.90,000/- was ordered to be recovered as fine and recovery warrant to that effect was also issued along with warrant of arrest against the petitioner/surety.

2. Learned counsel for the petitioner submits that respondent no. 2 herein filed a complaint under section 138/142 of Negotiable Instrument Act, 1881 before the court of JMIC, Kurukshetra whereby accused/respondent no. 3 was convicted and sentenced to undergo simple imprisonment for a period of one year and six months vide judgment dated 03.09.2019 attached as Annexure P-2 and order dated 05.09.2019 attached as Annexure P-3. He further submits that the respondent no.3 preferred an appeal against the order of Ld. JMIC and secured the concession of bail in

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which the petitioner furnished a surety bond of Rs.90,000/-. Since the respondent no.3 failed to appear before the Appellate Court so, the learned Appellate Court ordered to forfeit surety bonds furnished by the petitioner/surety for appellant/convict and amount of surety bonds i.e. Rs.90,000/- was ordered to be recovered as fine and recovery warrant to that effect be also issued along with warrant of arrest was issued against the petitioner/surety vide order dated 08.03.2022 attached as Annexure P-1. He further contends that though the appeal was allowed and the accused was acquitted vide order dated 11.02.2023 as the matter was compromised between the parties, attached as Annexure P-4, however, vide order dated 08.03.2022 attached as Annexure P1, warrant of arrest had been issued against the petitioner and amount of surety bonds were ordered to be recovered as fine by the learned Addl. Session Judge.

3. Counsel for the petitioner has placed reliance upon the judgments passed by Coordinate Bench(s) of this Court in CRM-M-37155-2021 titled as Lakhwinder Singh Vs. State of Punjab and CRM-M-59270-2022 titled as Sanjeev Kumar Vs State of Haryana. The relevant paras of the judgment passed in CRM-M-59270-2022 are reproduced below:-

“9. It is clear that dispute between private parties regarding cheque amount has already been resolved, inasmuch as, main petition stands withdrawn by the complainant himself on 09.06.2022, as already noticed above.

10. In “Baldev Chand Bansal v. State of Haryana and another” (CRM-M-43813-2018, decided on 29.01.2019), a co-ordinate Bench of this Court 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 140 CRM-M-59270-2022 5 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 FIR was registered under Section 174-A IPC pursuant to an order passed by the Trial Court in proceedings under Section 138 of the Negotiable Instruments Act, 1881, while declaring petitioner therein as 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, 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 consideration for allowing the petition and setting aside the order declaring the petitioner therein as proclaimed person as well as quashing of FIR under Section 174-A IPC.

12. Another co-ordinate Bench of this Court in a case titled as “Ashok Madan v. State of Haryana and another”, 2020 (4) R.C.R. (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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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. Reiterating the same principle, in case of Hitesh H. Shah (supra), continuation of proceedings under Section 174-A IPC were held to be abuse of the process of law, once main dispute between the parties has already ended.

14. Under these circumstances, once the very complaint case under Section 138 of the Negotiable Instruments Act, 1881, filed against the present petition stands withdrawn, on the basis of compromise, continuation of FIR No. 0348, dated 17.02.2020, under Section 174-A IPC (Annexure P-1), registered at Police Station Ambala City, is nothing but an abuse of process of law. In this regard reliance can also be placed upon judgment rendered by this Court in the case of “Microqual Techno Limited and others v. State of Haryana and another”, 2015 (32) R.C.R. (Criminal) 790, which has also been followed in “Jitender Singh v. State of Haryana and another” (CRM-M-47891-2021, decided on 16.11.2021).

15. Accordingly, this petition is allowed and FIR No. 0348, dated 17.02.2020, under Section 174-A IPC (Annexure P-1), registered at Police Station Ambala City, along with all subsequent proceedings emanating therefrom, are quashed qua the petitioner herein.”

4. From a perusal of the order dated 11.02.2023, it is apparent that a compromise has been effected between the complainant and the accused and the judgment of conviction dated 03.09.2019 and order of sentence

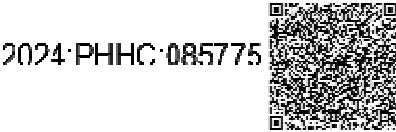
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dated 05.09.2019 passed by the learned trial Court was set aside and the accused was acquitted of the offences charged against him.

5. In case of Vimlaben Ajitbhai Patel Vs. Vatslaben Ashokbai Patel and others, reported in 2008 (2) RCR (Criminal) 699, the Hon'ble Supreme Court has observed as under:-

"32. The provisions contained in Section 82 of the Code of Criminal Procedure were put on the statute book for certain purpose. It was enacted to secure the presence of the accused. Once the said purpose is achieved, the attachment shall be withdrawn. Even the property which was attached, should be restored. The provisions of the Code of Criminal Procedure do not warrant sale of the property despite the fact that the absconding accused had surrendered and obtained bail. Once he surrenders before the court and the standing warrants are cancelled, he is no longer an absconder. The purpose of attaching the property comes to an end. It is to be released subject to the provisions of the Code. Securing the attendance of an absconding accused, is a matter between the State and the accused. The complainant should not ordinarily derive any benefit therefrom. If the property is to be sold, it vests with the State subject to any order passed under Section 85 of the Code. It cannot be a subject-matter of execution of a decree, far less for executing the decree of a third party, who had no right, title or interest thereon."



6. In the present case, the matter has been settled and compromised between the complainant and the accused and they were allowed to compound the offence under Section 138 of the Negotiable Instruments Act, 1881 and the judgment of conviction dated 03.09.2019 and the order of sentence dated 05.09.2019 passed by the trial Court is set aside.

7. In view of the aforementioned discussion, this Court is of the considered view that no fruitful purpose will be served by recovering the surety amount of Rs.90,000/- from the petitioner. Accordingly, the present petition is allowed and the order dated 08.03.2022 (Annexure P1) passed by the Addl. Session Judge, Kurukshetra is hereby set aside.

8. Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

10.07.2024
Ramandeep Singh

Whether speaking / reasoned Yes/No

Whether Reportable Yes/No