

2024.PHHC.113714



208.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31366-2024

Date of decision: 31.08.2024

Sukhwinder Singh

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

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

Mr. Gurmeet Singh, AAG, Haryana.

GURBIR SINGH, J.

1. This petition has been filed under Section 482 Cr.P.C. for quashing the order dated 07.12.2022 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Sirsa, vide which, the petitioner has been declared proclaimed person in a complaint bearing NACT No.1203 of 2019 titled as *Partap Singh Versus M/s Osho Poultries etc.* under Section 138 of Negotiable Instruments Act, 1881 (for short, the Act), and FIR No.1174, dated 15.12.2022, under Section 174-A IPC, 1860, Police Station Civil Lines, Sirsa, District Sirsa.

2. The brief facts of the case are that in order to discharge his liability, the petitioner issued a cheque of Rs.2 lacs in favour of complainant-Partap Singh but on its presentation with the Bank, it was dishonoured with the remarks “funds insufficient”. Legal notice was also

served but the petitioner failed to pay the amount of cheque and complaint was filed. But due to his non-appearance in complaint proceedings, vide order dated 07.12.2022, he was declared proclaimed person and FIR under Section 174-A of IPC was registered against him. Subsequently, the petitioner-accused settled the matter with the complainant. Thereafter, the complainant moved an application before the learned Judicial Magistrate Ist Class, Sirsa that he did not want to proceed further with the complaint and wanted to withdraw the same. Vide order dated 25.01.2023, the complaint was dismissed as withdrawn.

3. Learned counsel for the petitioner submits that no notice was served upon the petitioner. He was not having the knowledge of pendency of proceedings before the trial Court. On coming to know about the initiation of the criminal proceedings, he compromised the matter with the complainant and paid the entire payment to him. The complainant had withdrawn the complaint.

3.1 Learned counsel for the petitioner further submits that since the complaint itself has been withdrawn in view of amicable settlement between the parties, continuation of proceedings under Section 174-A of IPC is nothing but an abuse of process of law.

4. Learned State counsel has filed reply by way of affidavit dated 28.08.2024 of Subhash Chand, HPS, Deputy Superintendent of Police (HQ), Sirsa, District Sirsa, on behalf of respondent-State, which is taken on record. He has opposed the present petition by contending that the

petitioner is a habitual offender. He has been declared proclaimed offender in some other case as well i.e. FIR No.694, dated 23.08.2022, under Section 174-A of IPC, Police Station Civil Lines, Sirsa. Learned State counsel has further submitted that the FIR in the present case has been correctly registered against the petitioner.

4.1 To refute the argument of learned State counsel regarding another case having been registered against the petitioner, learned counsel for the petitioner has produced copy of order dated 23.08.2024 passed by this Court in ***CRM-M-40501-2024*** titled as ***Sukhwinder Singh Versus State of Haryana***, vide which, the order declaring the petitioner as proclaimed offender and FIR No.694 (supra) have already been set aside.

5. I have heard the submissions of learned counsel for the petitioner, learned State counsel and have gone through the file.

6. A co-ordinate Bench of this Court in ***CRM-M-43813-2018*** titled as ***Baldev Chand Bansal Versus 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.”

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 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.

6.1 Another co-ordinate Bench of this Court in a case titled as ***Ashok Madan Versus State of Haryana and another-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 view of above, this Court finds that since the main complaint filed under Section 138 of the Act has been withdrawn in view of amicable settlement between the parties, therefore, continuation of proceedings under Section 174-A of IPC shall be nothing but an abuse of the process of law.

8. Keeping in view the above said facts and circumstances, the present petition is allowed and FIR No.1174, dated 15.12.2022, under Section 174-A of IPC, Police Station Civil Lines, Sirsa, District Sirsa and all subsequent proceedings arising therefrom, as well as order dated 07.12.2022 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Sirsa, vide which, the petitioner has been declared proclaimed person in complaint bearing NACT No.1203 of 2019 under Section 138 of NI Act, are hereby quashed, however, that would subject to payment of costs of Rs.10,000/- to be deposited by the petitioner with the Poor Patients Welfare Fund, PGIMER, Chandigarh, within 20 days and receipt thereof be filed in the Registry immediately thereof, which shall be placed on this file.

(GURBIR SINGH)
JUDGE

August 31, 2024
sanjeev

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