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2024:PHHC:038822

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33917-2023
DECIDED ON: 26.02.2024

SUBHASH T GOPALAKURAP

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Bhagwan Singh, Advocate
for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG Haryana.

Mr. Vineet Sehgal, Advocate for respondent No.2.

SANDEEP MOUDGIL, J (ORAL)

1. This is a petition under Section 482 of Cr.P.C., for quashing of the order dated 31.08.2021 (Annexure P-2), vide which the petitioner has been declared proclaimed person in NACT/13549/2017 dated 28.09.2017 (Annexure P-1).
2. Learned counsel for the petitioner states that the main complaint NACT/13549/2017 dated 28.09.2017, under Section 138 of Negotiable Instruments Act, stands withdrawn by the complainant, in view of the compromise affected between the parties vide order dated 02.05.2023 (Annexure P-3) passed by Presiding Officer, Daily Lok Adalat-cum-JMFC, Gurugram.
3. Learned counsel for the petitioner has sought quashing of the aforesaid order on account of the fact that the petitioner was never served, as there is no evidence with regard to the service upon the petitioner in the complaint under Section 138 of Negotiable Instruments Act.

4. He further contends that on 31.08.2021, the proceedings in complaint case No. NACT/13549/2017 were fixed for presence of the present petitioner, wherein the petitioner remained absent, therefore, the Id. JMFC, Gurugram declared the petitioner as Proclaimed Person and sent the copy of the order to SHO of the concerned Police Station for registration of FIR under section 174-A IPC. A copy of the order dated 31.08.2021 passed in NACT/13549/2017 is annexed as (Annexure P-2).

5. Heard, learned counsel for petitioner.

6. Since the main complaint has been dismissed as withdrawn, as is evident from the perusal of aforesaid order dated 02.05.2023 (Annexure P-3) passed by Judicial Magistrate 1st Class, Gurugram and the offence between the petitioner and complainant is personal in nature not against the society at large, who have resolved their dispute, no fruitful purpose would be served by continuing the proceedings in pursuance of the order dated 31.08.2021 (Annexure P-2).

7. This Court is convinced on perusal of the pleadings and the submissions made by learned counsel for the petitioner that the petitioner was never served with the summoning orders or anyailable/non-ailable warrants at any stage during the course of trial, the continuation of proceedings in pursuance of the order dated 31.08.2017 (Annexure P-2) passed by Judicial Magistrate 1st Class, Gurugram would tantamount to nothing else, but an abuse of process of law, which will finally be turned to a futile exercise.

8. The principle has been laid down in several dictums of this Court and reliance can be placed upon the orders dated 20.07.2022 and 24.08.2022 respectively, passed by a coordinate Bench of this Court in CRM-M-46062-2017, titled as ***“Jatin Dhawan and another versus State of Haryana and another”*** and CRM-M-12534-2022, titled as ***“Krishan Kumar versus State of Haryana and***

another", respectively wherein it has been held that once the main case is dismissed as withdrawn, the continuation of proceedings under Section 174-A IPC shall be an abuse of process of law.

9. Further reliance can be placed upon the orders of this Court dated 12.12.2022 and 13.12.2022 passed in CRM-M-55634-2022 titled as "**Jinder Singh Vs. State of Punjab and another**" and CRM-M-45051-2022 titled as "**Hari Singh Meena Vs. State of Haryana**", respectively in this regard.

10. 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 174-A 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 174-A I.P.C. Shall be abuse of the process of court.

Accordingly, the petition is allowed. FIR No.446 dated 21.08.2017, registered under Section 174-A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed."

11. 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 of the IPC shall be an abuse of the process of court.

12. Keeping in view the above-said facts and circumstances, the present petition is allowed and order dated 31.08.2021 (Annexure P-2) alongwith all consequential proceedings arising therefrom, is hereby quashed qua the petitioner.

26.02.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*