

CRM-M-35115-2023
Date of Decision: 15.03.2024

...Petitioner

VS.

...Respondent

Present : Mr. M.S Kathuria, Advocate
for the petitioner.

Mr. Sahil Soni, Advocate for
Mr. Tarun Dhingra, Advocate
for the respondent.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr. P.C with a prayer to set aside the impugned order dated 18.01.2023 (Annexure P-5) passed by the Court of Judicial Magistrate Ist Class, Kurukshetra, titled as **“Punjab National Bank Vs. Purshotam Dass”**, whereby the petitioner was declared as a proclaimed person.

2. Learned counsel for the petitioner contends that a complaint No.365/2020 titled as **“Punjab National Bank Vs. Purshotam Dass”** under Section 138 and 142 of the Negotiable Instruments Act (hereinafter referred to as the “Act”) was filed against the petitioner for dishonour of cheque bearing No.134161 dated 03.01.2020 for a sum of Rs.1,50,000/- drawn on Punjab National Bank, Khanpur Kotian. Vide the order dated 04.03.2020 (Annexure P-2), the petitioner was ordered to be summoned under Section 138

of the “Act”. After the summoning, the petitioner was ordered to be summoned by way of bailable warrants/non-bailable warrants. However, from the orders (Annexures P-3 and P-4) it was evident that the petitioner was never served and the warrants were received back unexecuted. Ultimately, vide the order dated 18.01.2023 (Annexure P-5), the petitioner was declared as a proclaimed person. Learned counsel further contends that now the matter has been amicably settled before the Mediation and Conciliation Centre of this Court vide compromise/settlement deed dated 06.09.2023. Even the respondent had agreed to withdraw the complaint (Annexure P-1), from the Court of Judicial Magistrate Ist Class. Learned counsel for the petitioner further contends that in view of the compromise/settlement the respondent/complainant has withdrawn the main complaint from the Court of Sher Singh, Judicial Magistrate Ist Class, Kurukshetra on 15.03.2024. Learned counsel further contends that the very purpose of the impugned order dated 18.01.2023 (Annexure P-5) was to procure the presence of the petitioner and since the main matter already stands compromised between the parties and the complaint has been withdrawn by the respondent/complainant, the impugned order dated 18.01.2023 (Annexure P-5) is liable to be quashed by this Court.

3. On the other hand learned counsel appearing on behalf of respondent submits that the respondent had already received an amount as per the settlement/agreement from the present petitioner and the respondent /complainant has no objection in case, the impugned order is set aside by this Court. Learned counsel further prayed that the present petition may be allowed and the impugned order may be quashed as the matter has been amicably

resolved between the parties.

4. 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.”

5. 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.

6. 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.”

7. In the present case also, the main case has already been withdrawn by the complainant. Consequently, the continuation of the proceedings arising from the impugned order dated 18.01.2023 (Annexure P-5) 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” .

8. In view of the above, the present petition is allowed and impugned order dated 18.01.2023 (Annexure P-5) and all subsequent proceedings arising therefrom are hereby ordered to be quashed.

15.03.2024
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(N.S.SHEKHAWAT)
JUDGE

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