

CRM-M-42611-2023 (O&M)

-1

2024:PHHC:054134

128+280

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42611-2023 (O&M)

Date of Decision:22.04.2024

Rakesh Kumar

...Petitioner

Vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Ravi Malhotra, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.Shekhawat J.

CRM-41028-2023

1. Application is allowed as prayed for, subject to just all exceptions.

2. Annexure P-7 is taken on record.

Main case

1. The petitioner has filed the present petition under Section 482 Cr. P.C with a prayer to quash FIR No. 50 dated 28.03.2023 under Section 174-A of IPC, registered at Police Station Navi Baradari, District Police Commissionerate, Jalandhar (Annexure P-4) and the order dated 21.01.2023 (Annexure P-3) passed by the Court of Judicial Magistrate Ist Class, Jalandhar, whereby the petitioner was declared as a proclaimed person and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contends that in the present case, a complaint under Section 138 of the Negotiable Instruments Act (hereinafter

referred to as the “Act”) was filed against the present petitioner for dishonour of cheque No.014926 dated 18.06.2020 for a sum of Rs.3,10,000/-, which was drawn at Union Bank of India, Overseas Branch, Jalandhar. Learned counsel for the petitioner next contends that during the course of hearing of the case before the trial Court, the summons/warrants were issued against the present petitioner, however, the same were never served on him. Consequently, vide order dated 21.01.2023 (Annexure P-3), he was wrongly declared as a proclaimed person, without following the due process of law and orders were issued to sent the intimation to concerned SHO for initiating the proceedings under Section 174-A of IPC. Learned counsel further contends that in view of the order (Annexure P-3), the police registered an FIR No. 50 dated 28.03.2023 under Section 174-A of IPC, Police Station Navi Baradari, District Police Commissionerate Jalandhar (Annexure P-4) against the present petitioner. Learned counsel further submits that when the petitioner came to know about the registration of the FIR, he had compromised the matter with the complainant and the complainant had withdrawn the main complaint on 09.09.2023 (Annexure P-7). Learned counsel further submits that the impugned order was passed by the Trial Court just to procure the presence of the petitioner in a criminal trial, no purpose will be served with the continuation of the proceedings as the main complaint has already been withdrawn by the complainant.

3. On the other hand, learned State counsel submits that the petitioner had intentionally evading the process of law and did not appear before the Trial Court. Learned State counsel further submits that the petitioner has not been able to point out any illegality in the impugned order passed by the Trial Court

and the petition deserves to be dismissed by this Court.

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.

xxx xxx xxx

*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.”

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 21.01.2023 (Annexure P-3) and FIR No. 50 dated 28.03.2023 under Section 174-A of IPC, registered at Police Station Navi Baradari, District Police Commissionerate, Jalandhar (Annexure P-4) 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 the impugned order dated 21.01.2023 (Annexure P-3) and FIR No. 50 dated 28.03.2023 under Section 174-A of IPC, registered at Police Station Navi Baradari, District Police Commissionerate Jalandhar (Annexure P-4) and all subsequent proceedings arising therefrom are hereby ordered to be quashed.

22.04.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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