

2024:PHHC:022214

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRM M-40898 of 2023
Date of Decision: 14.02.2024**

Rajpal Nunach ...Petitioner
Vs.
State of Haryana ...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sant Lal Barwal, Advocate, for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Mr. Mahender Singh Chahal, Advocate
for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C., with a prayer to quash the order dated 10.08.2016 (Annexure P-1) passed by the Court of Judicial Magistrate 1st Class, Hisar, whereby, the present petitioner has been declared as a proclaimed person and FIR No. 825 dated 11.09.2022 registered under Section 174-A IPC at Police Station City Hisar, District Hisar (Annexure P-2) 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 1881 (hereinafter to be referred as '**the Act**') bearing

No. 2604/2015 dated 07.12.2015 titled as “**Sanjay Vs. Rajpal Nunach**” was filed against the present petitioner by Sanjay son of Ami Lal, resident of village Dhansu, Tehsil and District Hisar, on account of dishonour of a cheque issued by the present petitioner. 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. Even, before issuing the proclamation, the mandatory provisions of Section 82/83 of the Code of Criminal Procedure were not followed during the said process. Consequently, vide the impugned order dated 10.08.2016 (Annexure P-1), the Court of the Judicial Magistrate 1st Class, Hisar, declared the petitioner to be a proclaimed person illegally.

3. When the petitioner came to know about the pendency of the present complaint before the trial Court, he immediately approached the respondent/complainant for the compromise of the case and the petitioner had deposited the cheque amount, i.e., Rs. 2.50 lacs before the trial Court, which is evident from the order dated 10.01.2023 (Annexure P-4) passed by the trial Court. Even, the respondent/complainant had withdrawn his complaint under Section 138 of the Act on same day.

4. Learned counsel for the petitioner submits that after declaring the petitioner as proclaimed person, one FIR No. 825 dated 11.09.2022 174-A of IPC, Police Station Hisar, District Hisar was also ordered to be registered against the present petitioner. Learned counsel further

contends that the very purpose of passing of the impugned order dated 10.08.2016 (Annexure P-1) and FIR (Annexure P-2) was to procure the presence of the petitioner and since the main matter already stands compromised between the parties, the proceedings arising out of the impugned order dated 10.08.2016 (Annexure P-1) and FIR (Annexure P-2) are liable to be quashed by this Court.

5. 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.”

6. 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 person, 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.

7. 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 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.”

8. 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 10.08.2016 (Annexure P-1) and the FIR No. 825 dated 11.09.2022 under Section 174-A IPC, registered at Police Station Hisar City, District Hisar (Annexure P-2) would be an abuse of process of the Court. Similar

