

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-52538 of 2023
Date of Decision: 11.03.2024

Varun Bhatia ...Petitioner
Vs.
The State of Punjab and another ...Respondents

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

Present : Mr. Umesh Aggarwal, Advocate, for the petitioner.
Mr. M.S. Bajwa, DAG, Punjab.

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 FIR No. 137 dated 26.10.2022 under Section 174-A of IPC registered at Police Station Division E, District Police Commissionerate Amritsar (Annexure P-1) and all subsequent proceedings arising therefrom.
2. Learned counsel for the petitioner contends that the respondent No. 2/complainant had filed a complaint bearing NACT No. 3154 of 2018 titled as “M/s Kehsav Trading Company Vs. Varun Cloth House and another” under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as 'the Act') before the trial Court at Amritsar, on account of dishonour of

cheque, allegedly issued by the petitioner. Learned counsel for the petitioner contends that after the summoning order was passed by the trial Court, the petitioner was never served in the case. Even, the summons/warrants were issued for the service of the petitioner. However, the petitioner was never served during the said process and the petitioner was declared as a 'proclaimed person' on 05.08.2022. Vide order dated 05.08.2022, the trial Court ordered for registration of the FIR against the present petitioner and, as a consequence to that, FIR No. 137 dated 26.10.2022 under Section 174-A of IPC, Police Station Division E, District Police Commissionerate, Amritsar, was ordered to be registered against the petitioner. After the registration of the FIR, the petitioner came to know about the pendency of the proceedings under Section 138 of the Act against him and the petitioner and respondent No. 2 had entered into a compromise. Ultimately, in terms of the compromise, the complaint preferred by respondent No.2 was dismissed as withdrawn on 21.11.2022. Learned counsel for petitioner has also placed reliance on the statement of respondent No.2/complainant dated 21.11.2022 (Annexure P-2) and the order dated 21.11.2022 (Annexure P-3) passed by the Judicial Magistrate 1st Class, Amritsar, in this regard. Learned counsel further contends that the very purpose of the impugned FIR was to procure the presence of the petitioner and since the main matter has already been compromised between the parties, the proceedings arising out of the order dated 05.08.2022 and the FIR No. 137 dated 26.10.2022

under Section 174-A of IPC registered at Police Station Division E, District Police Commissionerate Amritsar (Annexure P-1) are liable to be quashed.

3. A short reply by way of an affidavit of the Assistant Commissioner of Police, Central Amritsar City has been filed on behalf of the respondent No.1-State and the same is taken on record.

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 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 the present case also, the main case has already been withdrawn by the complainant. Consequently, the continuation of the proceedings arising from the order dated 05.08.2022 and FIR No. 137 dated 26.10.2022 under Section 174-A of IPC registered at Police Station Division E, District Police Commissionerate Amritsar (Annexure P-1) 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 order dated 05.08.2022 and FIR No. 137 dated 26.10.2022 under Section 174-A of IPC registered at Police Station Division E, District Police Commissionerate Amritsar (Annexure P-1) alongwith all subsequent proceedings arising therefrom are hereby ordered to be quashed.

11.03.2024

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

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Yes/No