



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

CRM-M-65446-2024
Date of decision: 07.01.2025

Ranjeev Aggarwal @ Sanjeev AggarwalPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rishabh Gupta, Advocate
for the petitioner.

Mr. Pankaj Midha, Addl.A.G., Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing of order dated 16.11.2015 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class, Karnal in a complaint case under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') whereby, the petitioner was declared as proclaimed person along with FIR No.0134 dated 29.09.2019 under Section 174-A of IPC registered at Police Station Sector 32-33, Karnal, District Karnal (Annexure P-3) and all consequential proceedings emanating therefrom.

2. Learned counsel appearing for the petitioner contends that the petitioner was not aware about the complaint filed by the complainant and the summons of the said complaint were never served upon the petitioner, therefore, he could not appear before the learned trial Court. He further contends that on account of his non-appearance, the trial Court declared the petitioner as proclaimed person vide order dated 16.11.2015 (Annexure P-2)



CRM-M-65446-2024

-2-

and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed person for commission of offence under Section 174-A IPC and consequently, FIR No.0134 dated 29.09.2019 under Section 174-A of IPC was registered at Police Station Sector 32-33, Karnal, District Karnal against him. Aggrieved by the said impugned order dated 16.11.2015 (Annexure P-2) as well as the said FIR, the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court and the petitioner has been declared as proclaimed person on 16.11.2015. In support of his arguments, counsel for the petitioner relies upon the judgment passed by this Court in *Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319* and the judgment passed by the Gujarat High Court in *Govindbhai Patel Vs. State of Gujarat 2004 (4) RCR (Criminal) 830*. He further submits that the matter has been compromised between the parties and the complaint filed by the complainant has been dismissed as withdrawn by the learned trial Court vide order dated 15.09.2022 (Annexure P-6).

4. Notice of motion.

5. Mr. Pankaj Midha, Addl.A.G., Haryana who is present in Court accepts notice on behalf of the respondent-State and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.



6. I have heard learned counsel for the parties and perused the record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

7. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

8. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. The conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

9. Learned State counsel very fairly concedes that the matter between the parties has been compromised. The learned trial Court has recorded the statement of the complainant with regard to the compromise effected with the petitioner and the original complaint filed by the complainant was dismissed as withdrawn by the learned trial Court vide order dated 15.09.2022 (Annexure P-6).

**CRM-M-65446-2024****-4-**

10. The question which arises for consideration of this Court is whether on account of withdrawal of the complaint under Section 138 of the Act on the basis of compromise, the impugned order dated 16.11.2015 as well as the said FIR and subsequent proceedings arising therefrom, deserve to be quashed?

11. The stand of learned counsel representing the petitioner is that the petitioner has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section 82 Cr.P.C. Both the parties have settled the matter amicably which has resulted in withdrawal of the complaint under Section 138 of the Act. In the factual backdrop of this case, undisputedly, once the substantive offence already stands settled between the petitioner and the complainant, the impugned order dated 16.11.2015 as well as the said FIR and subsequent proceedings arising therefrom would be of no consequence.

12. Reliance in this regard has been placed upon various pronouncements on the issue involved in the present case. In **CRM-M-43813-2018, Baldev Chand Bansal vs. State of Haryana and another, decided on 29.01.2019, Vikas Sharma vs. Gurpreet Singh Kohli and another, 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**, the Coordinate Benches of this Court in identical circumstances, have held that since the main complaint filed under Section 138 of the Act stands withdrawn in view of an amicable



CRM-M-65446-2024

-5-

settlement between the parties, therefore, the impugned order and consequent FIR under Section 174-A IPC would be of no use.

13. A Coordinate Bench of this Court in **Vikas Gupta vs. State of Haryana and others**, while quashing the FIR under Section 174-A of the IPC in **CRM-M-19636-2018** decided on 01.08.2018 has observed the following:-

“The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.”

14. Moreover, the drill of Section 195 Cr.P.C. has not been followed in the present case. A co-ordinate bench of this Court in **Pardeep Kumar vs. State of Punjab and another CRM-M No.41656 of 2023 decided on 23.08.2023**, speaking through Justice Arun Monga made the following observations:

"Invoking criminal liability for the offence under section 174A of IPC:

xxx xxx xxx

xvii. Once the Court decides to proceed against the petitioner for an offence under Section 174A of the IPC, it is imperative to institute a formal written complaint in the competent jurisdictional court. This imperative arises from the prevailing provision of section 195 of the Code of

**CRM-M-65446-2024****-6-**

Criminal Procedure, 1973 which mandates that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate."

15. Learned counsel representing the State has not been able to controvert the aforesaid facts and the position of law as laid down in the aforesaid judgment.

16. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 16.11.2015 (Annexure P-2) vide which the petitioner was declared as proclaimed person as well as the FIR No.0134 dated 29.09.2019 under Section 174-A of IPC registered at Police Station Sector 32-33, Karnal, District Karnal (Annexure P-3) and all the consequential proceedings emanating therefrom, are hereby set aside.

(HARPREET SINGH BRAR)
JUDGE

07.01.2025*Neha*

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