

***Before Vikas Bahl, J.***

**MANDEEP VERMA — Petitioner**

*versus*

**STATE OF HARYANA AND ANOTHER — Respondent**

**CRM-M No. 35150 of 2022**

August 08, 2022

***Code of Criminal Procedure, 1973 — S.482 — Indian Penal Code, 1862 — S.174-A — Negotiable Instruments Act, 1881 — Ss. 138 and 142 — Petitioner never served in complaint under Section 138 NI Act — Wrongly declared proclaimed person and FIR registered under Section 174-A IPC — Petitioner appeared before the trial court in complaint case — Paid the cheque amount and interest and cost to the complaint — Complaint under Section 138 NI Act withdrawn — FIR liable to be quashed — Notice not issued to complainant of complaint case — Not a necessary party — Petition allowed.***

*Held*, that Amar Singh had filed a complaint under Section 138/142 N.I. Act against the present petitioner with respect to dishonour of cheque of Rs.25,000/- and in the said proceedings, it is the case of the petitioner that he was never served and was illegally declared proclaimed person vide order dated 31.08.2017 (Annexure P-3) in which direction was also given to register an FIR and in pursuance of the said order, present FIR has been registered. A perusal of the order dated 16.03.2020 would show that the petitioner appeared before the trial Court in the proceedings under Section 138 N.I. Act and requested that the complainant be directed to receive the money and thereafter on 17.03.2020 the complainant had appeared and made statement that he has received the cheque amount as well as interest and cost amount and he did not want to pursue the complaint under Section 138 N.I. Act and accordingly, the complaint was dismissed as withdrawn. Once the proceedings under Section 138 N.I. Act have been withdrawn, then the present FIR under Section 174-A IPC also deserves to be quashed.

(Para 9)

*Further held*, that keeping in view the above said facts and circumstances and in view of the law laid down in the above said judgments, the present petition is allowed and the FIR no.86 dated

14.03.2020 registered under Section 174-A IPC at Police Station Madhuban Karnal, Haryana and all the subsequent proceedings arising therefrom are hereby quashed.

(Para 10)

Shubhnit Hans, Advocate, *for the petitioner.*

Praveen Bhadu, AAG, Punjab.

**VIKAS BAHL, J. (ORAL)**

(1) This is a petition under Section 482 Cr.P.C. for quashing of FIR no.86 dated 14.03.2020 registered under Section 174-A IPC at Police Station Madhuban Karnal, Haryana and all the consequential proceedings arising therefrom.

(2) Learned counsel for the petitioner has submitted that in the present case, a complaint under Section 138 read with 142 of the Negotiable Instruments Act, 1881 (in short "N.I. Act") was filed by Amar Singh against the present petitioner and another co-accused for dishonour of the cheque amount of Rs.25,000/- and in the said proceedings, the petitioner was never served in accordance with law and was illegally declared as proclaimed person vide order dated 31.08.2017 and the Judicial Magistrate Ist Class, Karnal had directed the police to register the FIR in respect of the same and in pursuance of the said order, the present FIR has been registered. It is further submitted that on learning about the said proceedings, the petitioner appeared before the trial Court and requested the complainant to appear and to receive the amount as is apparent from the order dated 16.03.2020 (Annexure P-4) and that in pursuance of the same, the matter was compromised and the complainant appeared on 17.03.2020 and suffered statement that he has received the cheque amount as well as interest and cost amount and he does not want to pursue the complaint and accordingly, complaint under Section 138 N.I. Act was withdrawn. It is further submitted that once the complaint under Section 138 N.I. Act has been withdrawn, the present FIR under Section 174-A IPC deserves to be quashed.

(3) Learned State counsel, on the other hand, has opposed the present petition and has submitted that the present FIR has been registered in pursuance of the order passed on 31.08.2017 by the Judicial Magistrate Ist Class, Karnal and thus, the present petition deserves to be dismissed.

(4) This Court has heard learned counsel for the parties and has perused the paper book.

(5) A co-ordinate Bench of this Court in **CRM-M-43813-2018** titled as **Baldev Chand Bansal versus 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 circumstances, 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, declaring the petitioner therein as 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 consideration for allowing the petition and setting aside the order declaring the petitioner therein as 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 versus State of Haryana and another*<sup>1</sup> 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 StationKotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

(8) A perusal of the relevant extract of the above judgment would show that where the main case was dismissed for want of prosecution, it was observed that the continuation of proceedings under Section 174-A IPC would be an abuse of the process of court.

(9) Amar Singh had filed a complaint under Section 138/142 N.I. Act against the present petitioner with respect to dishonour of cheque of Rs.25,000/- and in the said proceedings, it is the case of the petitioner that he was never served and was illegally declared proclaimed person vide order dated 31.08.2017 (Annexure P-3) in which direction was also given to register an FIR and in pursuance of the said order, present FIR has been registered. A perusal of the order

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<sup>1</sup> 2020(4) RCR (CrI.) 87

dated 16.03.2020 would show that the petitioner appeared before the trial Court in the proceedings under Section 138 N.I. Act and requested that the complainant be directed to receive the money and thereafter on 17.03.2020 the complainant had appeared and made statement that he has received the cheque amount as well as interest and cost amount and he did not want to pursue the complaint under Section 138 N.I. Act and accordingly, the complaint was dismissed as withdrawn. Once the proceedings under Section 138 N.I. Act have been withdrawn, then the present FIR under Section 174-A IPC also deserves to be quashed.

(10) Keeping in view the above said facts and circumstances and in view of the law laid down in the above said judgments, the present petition is allowed and the FIR no.86 dated 14.03.2020 registered under Section 174-A IPC at Police Station Madhuban Karnal, Haryana and all the subsequent proceedings arising therefrom are hereby quashed.

(11) Notice is not being issued to respondent no.2 Amar Singh, who is the complainant in the complaint filed under Section 138 N.I. Act, as he is not a necessary party inasmuch as he is not the complainant in the present FIR under Section 174-A IPC, the quashing of which is sought and at any rate, as is apparent from the order dated 17.03.2020, the said complainant had appeared in the proceedings under Section 138 N.I. Act and had withdrawn the complaint after having received the cheque amount of Rs.25,000/- and also the interest and cost amount of Rs.15,000/-, thus, issuance of notice to him would only result in his entailing legal expenses in engaging a counsel to appear in the present matter.

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*Shubreet Kaur*