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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 10.01.2025

Soni Kumar

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Mehtab Singh, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.

SUMEET GOEL, J. (Oral)

1. The petition in hand has been filed under Section 528 of BNSS, 2023 with the following substantive prayer:

"It is therefore, respectfully prayed that present petition may kindly be accepted and FIR No.34 dated 12.03.2023, under Section 174-A of IPC (Annexure P-9) registered at Police Station Longowal, District Sangrur and all subsequent proceedings arising therefrom including the order dated 25.04.2024 (Annexure P-11) whereby the charges under Section 174-A of IPC have been framed against the petitioner in view of the fact that the main complaint titled as "Jiwan Singh Versus Soni Kumar" bearing No. Nact-891-2021, under Section 138 of Negotiable Instruments Act was ordered to be dismissed as withdrawn by the Court of Learned Judicial Magistrate, First Class, Sangrur vide order dated 8.04.2024 (Annexure P-10), as the matter was compromised between the parties to the complaint u/s 138 of Negotiable Instruments Act and in view of the fact that the present petitioner was wrongly declared as a proclaimed person, in violation of the procedure laid-down in Criminal Procedure Code, 1973, which was in vogue at the relevant time, may kindly be quashed, in the interest of justice."

2. The impugned FIR (as set out in the petition in hand) reads thus:-

“Copy of letter, Copy of order No.814 dated 06.03.2023 was received through post from the Court of Shri Karun Garg, JMIC Sangrur wherein it has been directed that Soni Kumar be declared as P.O. and action be taken against him U/s174-A of IPC and the subject matter of the same is that:- No.861-2021 Jiwan Singh Vs. Soni Kumar,, Present: Shri Sukhvinder Pal, Adv. Counsel for complainant. File taken up today on an application filed Ld. Counsel for the complainant/applicant whereby it is submitted that in the order dated 20.08.2022, 174 IPC was mentioned instead of 174-A IPC. Perusal of the file reveals that accused Soni Kumar was declared proclaimed person on 20.08.2022 and it was ordered that necessary intimation be sent to the concerned authorities/SHO for taking action u/s/174-A IPC. However, due to typographical mistake, 174 IPC was mentioned instead of 174-A of IPC. Mistake stands rectified. It is ordered that Section 174 IPC in order dated 20.08.2022 be read as 174-A IPC. Thus, necessary information be sent to the concerned authorities/SHO for taking action u/s174-A IPC. Application stands disposed of. A copy of this order be also given to Ld. Counsel for the application. Sd/- Karun Garg JMIC, Sangrur UID No.PB0578 dated 03.03.2023. On receiving the above order the case under Section 174-A IPC against Soni Kumar Son of Roop Chand Resident of Patti Vadiyani, Village Longowal, has been registered. The entry has been made in the record. IO/C Control Room, Sangrur has been informed through E.Mail. The original order alongwith copy of FIR has been sent as per the order of SHO through C.Gursewak Singh, 1907/Sang., Police Station Longowal for further investigation.”

3. Learned counsel for the petitioner has submitted that the impugned FIR, has its genesis, in a criminal complaint filed against the petitioner (herein) under Section 138 of Negotiable Instruments Act of 1881, in proceedings whereof the petitioner was declared as a proclaimed person & hence the impugned FIR came to be got registered against the petitioner. Learned counsel for the petitioner has argued that the order as also the proceedings declaring the petitioner as a proclaimed person are manifestly illegal and against the mandatory provisions of law. It has been further iterated that the criminal complaint under Section 138 of NI Act, 1881 has



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already been withdrawn as the rival parties had entered into a settlement and hence no useful purpose would be served by continuation of the proceedings *qua* the impugned FIR. To buttress this aspect of his argument, learned counsel for the petitioner has relied upon the order dated 08.04.2024 passed by the concerned Judicial Magistrate which reads thus:

“Present: Sh. Sukhvinder Pal, Adv., counsel for complainant.

*File taken up today on an application moved by learned counsel for the complainant for putting up the file and to withdraw the present complaint. Thereafter, learned counsel for the complainant suffered a statement to the effect that matter has been compromised with the accused, therefore, as per the instructions of the complainant, he withdraws the present complaint. In view of the said application, complaint is ordered to be restored at its original number and present CRM stands disposed of accordingly and be attached with the main file. In view of the statement so suffered by learned counsel for the complainant, present complaint stands dismissed as withdrawn. Since the learned counsel for the complainant has withdrawn the present complaint, therefore, in the interest of justice, an intimation to the concerned SHO be issued regarding deletion of entry *qua* proclamation proceedings in the police record. File be consigned to the record room.”*

On the strength of above arguments, learned counsel for the petitioner has pressed for grant of petition in hand.

4. Reply by way of an affidavit of Harvinder Singh, Deputy Superintendent of Police, Sub Divison Sunam, District Sangrur, on behalf of State of Punjab has been filed in Court. Learned State counsel has raised submission in tandem with this reply and has opposed the petition in hand.

5. I have heard learned counsel for the rival parties and have persued the paper-book.

6. The seminal question that arises for consideration in the present petition is as to whether the impugned FIR (as also proceedings arising



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therefrom) under Section 174-A of the IPC deserves to be quashed in the factual matrix of the present case.

7. At this juncture; it would be apposite to refer herein to a judgment of this Court passed in CRM-M-51049-2019 titled as *Mohammad Hanif Attari vs. State of Haryana*, decided on 06.07.2023; relevant whereof reads as under:

"3. In view the fact that after the principle proceedings in which the petitioner was declared Proclaimed Offender stand concluded, the question would arise is: 'whether in the given circumstances, proceedings under Section 174A of the IPC pursuant to FIR No.425 dated 17th of November, 2017 can be allowed to continue.

4. The question framed ibid is no more res integra and already stands answered by Co-ordinate Bench of this Court in CRM-M-43813-2018 titled as "Baldev Chand Bansal v. State of Haryana and another" vide order dated 29.01.2019, which held as under:

"Prayer in this petition is for quashing of FIR No.64 dated 15.02.2017 filed under Section 174A 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 v. Gurpreet Singh Kohli and another (supra), 2017, (3) L.A.R.584, Microqual Techno Limited and others v. State of Haryana and another, 2015 (32) RCR (Criminal) 790 and "Rajneesh Khanna v. 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

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dated 24.10.2016 passed by Judicial Magistrate, 1st Class, Panchkula as well as FIR No.64 dated 15.02.2017 registered under Section 174A of the Indian Penal Code at Police Station Sector-5, Panchkula and all other subsequent proceedings arising thereof, are hereby quashed."

5. *Same is the view of another Co-ordinate Bench in the "Ashok Madaan v. State of Haryana and another" reported as 2020 (4) RCR (Criminal) 87, wherein it has been held that:*

"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 LP.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."

7.1. More recently, the Hon'ble Supreme Court in a judgment titled as ***Daljit Singh vs. State of Haryana and Another***, Criminal Appeal No.4359 of 2024 decided on 02.01.2025; has held that:

"7.3 Now, what happens if the status under Section 82 Cr.P.C. is nullified i.e., the person subjected to such proclamation, by virtue of subsequent developments is no longer required to be presented before a Court of law. Then, can the prosecution still proceed against such a person for having not appeared before a Court during the time that the process was in effect. The answer is in the affirmative. We say so for the following reasons:-

(i) The language of Section 174A, IPC says "whoever fails to appear at the specified place and the specified time as required by proclamation...". This implies that the very instance at which a person is directed to appear, and he does not do so, this Section comes into play;

(ii) *What further flows from the language employed is that the instance of non-appearance becomes an infraction of the Section, and therefore, prosecution therefor would be independent of Section 82, Cr.P.C. being in effect;*

(iii) *So, while proceedings under Section 174A IPC cannot be initiated independent of Section 82, Cr.P.C., i.e., can only be started post the issuance of proclamation, they can continue if the said proclamation is no longer in effect.*

(iv) *We find that the Delhi High Court has taken this view, i.e., that Section 174A, IPC is a stand-alone offence in **Mukesh Bhatia v.State (NCT of Delhi) 2022 SCC OnLine Del 1023; Divya Verma v. State 2023 SCC OnLine Del 2619; Sameena & Anr. v. State GNCT of Delhi & Anr. Crl. M.C. No.1470 of 2021, Dated 17th May, 2022** For the reasons afore-stated, we agree with the findings made in these judgments/orders. At the same time, it stands clarified that we have not commented on the merits of the cases.*

(v) *Granted that the offence prescribed in Section 174A IPC is indeed stand-alone, given that it arises out of an original offence in connection with which proceedings under Section 82 Cr.P.C. is initiated and in the said offence the accused stands, subsequently, acquitted, it would be permissible in law for the Court seized of the trial under such offence, to take note of such a development and treat the same as a ground to draw the proceedings to a close, should such a prayer be made and the circumstances of the case so warrant.*

8. *In conclusion, we hold that Section 174A IPC is an independent, substantive offence, that can continue even if the proclamation under Section 82, Cr.P.C. is extinguished. It is a stand-alone offence. xxxxxxxx”*

However, the Hon’ble Supreme Court quashed the impugned FIR (therein) under Section 174-A of the IPC since, *inter alia*, the original offence in the form of criminal complaint under Section 138 of NI Act, 1881 in the said case had been settled and withdrawn by the rival parties.

8. It is for the High Court, while exercising its innate plenary powers under Section 528 of BNSS, 2023/428 of Cr.P.C., 1973, to

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rationcinat that it should not apply the law in an austere, academic and exacting technical manner, without considering its practical implications. The Law is not merely a set of programmed, *nailed-to-the-ground* rules, to be applied without context. It must be enforced, while bearing in mind, that its purpose is to ensure substantive justice between the parties. The statutory provision of Section 174-A of IPC, when perused in the light of ratio decidendi of the judgment of the Hon'ble Supreme Court in ***Daljit Singh's*** case (supra), unequivocally shows that an FIR under Section 174-A of the IPC does not *proprio vigore* become liable to be quashed, in case the rival parties have entered into a compromise and such criminal complaint/FIR has been compromised and quashed/withdrawn accordingly. However, at the same time, the factum of the criminal complaint/FIR (in furtherance of proceedings whereof) having been compromised/settled, is indubitably, a relevant factor to be considered while dealing with a plea for quashing of an FIR (as also proceedings emanating therefrom) under Section 174-A of IPC. This fact assumes greater significance considering that the initial proceedings pertain exclusively to a private criminal complaint under Section 138 of NI Act, 1881, which the legislature has expressly classified as a compoundable offence. Such litigation, especially in the backdrop of original offence having been compromised will have an adverse impact on the overburdened Court-dockets. Allowing such prosecution, when initial complaint has been settled/withdrawn would undermine the legislative intent and distort the remedial nature of Section 138 of NI Act of 1881. It would tantamount to contravening the principles of fairness, proportionality, and justice in criminal proceedings. A literal interpretation may sometimes lead

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to unjust outcomes that also contradict the law's underlined purpose. Therefore, the High Court under its inherent jurisdiction must balance the letter of Law with its spirit, ensuring fair and equitable results. This approach underscores Law's role as an apparatus for fostering societal harmony and addressing the real-world complexities, efficaciously as also effectively, rather than mere literal/technical compliance.

9. The inherent jurisdiction under Section 528 BNSS, 2023/Section 482 Cr.P.C., 1973 is primarily aimed at preventing abuse of judicial process and securing the ends of justice. Thus, when the dispute is essentially personal in nature and a genuine compromise has been reached, the High Court may intervene to quash the criminal proceedings, recognizing the continuation thereof would be non-productive and unjust in the given circumstances. The inherent powers of a High Court are powers which are incidental replete powers, which if did not so exist, the Court would be obliged to sit still and helplessly see the process of law and Courts being abused for the purposes of injustice. In other words; such power(s) is intrinsic to a High Court, it is its very life-blood, its very essence, its immanent attribute. Without such power(s), a High Court would have form but lack the substance. These powers of a High Court hence deserve to be construed with the widest possible amplitude. These inherent powers are in consonance with the nature of a High Court which ought to be, and has in fact been, invested with power(s) to maintain its authority to prevent the process of law/Courts being obstructed or abused. It is a trite posit of jurisprudence that though laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the

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imperfections of language make it impossible to lay down provisions capable of governing every case, which in fact arises. A High Court which exists for the furtherance of justice in an indefatigable manner, should therefore, have unfettered power(s) to deal with situations which, though not expressly provided for by the law, need to be dealt with, to prevent injustice or the abuse of the process of law and Courts. The juridical basis of these plenary power(s) is the authority; in fact the seminal duty and responsibility of a High Court; to uphold, to protect and to fulfill the judicial function of administering justice, in accordance with law, in a regular, orderly and effective manner. In other words; Section 528 of BNSS, 2023 reflects peerless powers, which a High Court may draw upon as necessary whenever it is just and equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice *may* substantial justice between the parties and to secure the ends of justice.

10. Keeping in view the entirety of the attending facts and circumstances of the case in hand; especially the original offence being an offence under Section 138 of Negotiable Instruments Act of 1881, the original offence alleged to have been committed in the year 2021, the subject matter of the original offence having been settled amicably between the parties and the criminal complaint under Section 138 of Negotiable Instruments Act, 1881 having been withdrawn on the basis of such settlement/compromise; this Court deems it appropriate that the impugned FIR as also all proceedings emanating therefrom deserve to be quashed.

11. It is, hence, directed as under:

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(i) The FIR No.34 dated 12.03.2023, under Section 174-A of IPC (Annexure P-9) registered at Police Station Longowal, District Sangrur and all subsequent proceedings arising therefrom, including the order dated 25.04.2024 (Annexure P-11) whereby the charges under Section 174-A of IPC have been framed stand quashed.

(ii) All pending application(s), if any, stands disposed of.

(SUMEET GOEL)
JUDGE

January 10, 2025

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No