

HIGH COURT OF PUNJAB AND HARYANA**Bench: Hon'ble Mr. Justice Harpreet Singh Brar****Date of Decision: 06.11.2023****CRM-M-55589-2023**

Bookmark Education Services Pvt. Ltd. and anotherPetitioners

Versus

State of U.T. Chandigarh and another ...Respondents

Legislations:

Section 82, 482 of the Code of Criminal Procedure (Cr.P.C.)

Section 138 of the Negotiable Instruments Act

Section 174-A of the Indian Penal Code (IPC)

Headnotes:

Criminal Procedure – Quashing of Proclamation Order – Petitioners declared as proclaimed persons under Section 82 Cr.P.C. in a complaint under Section 138 of the Negotiable Instruments Act – Settlement between the parties and withdrawal of the complaint – Quashing of proclamation order due to settlement and procedural contravention. [Paras 1-2]

Compromise – Effect on Criminal Proceedings – Full and final payment received by the complainant resulting in the withdrawal of the complaint – Impact of an amicable settlement on the proclamation order issued under Section 82 Cr.P.C. [Para 3]

Decision – Quashing of Proclamation Order – Present petition allowed – Impugned order dated 13.01.2021 under Section 82 Cr.P.C. quashed along

with all consequential proceedings arising therefrom, following a settlement between the parties. [Para 6]

Referred Cases:

- Baldev Chand Bansal vs. State of Haryana and another, CRM-M-43813-2018, 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 (CrI.) 790
- Rajneesh Khanna Vs. State of Haryana and another, 2017 (3) L.A.R. 555
- Vikas Gupta vs. State of Haryana and others, CRM-M-19636-2018, decided on 01.08.2018

Representing Advocates:

Mr. Jatin Bansal, Advocate for the petitioners.

Mr. Manish Bansal, Addl.P.P., for respondent No.1-U.T. Chandigarh.

Mr. Kapil K. Gupta, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 21.01.2023 vide which the petitioners were declared as proclaimed persons in a complaint case bearing No. NACT/318/2021 dated 13.01.2021 under Section 138 of the Negotiable Instruments Act, passed by the Judicial Magistrate 1st Class, Chandigarh titled as 'Balraj Vs. Book Mark Education Services Pvt. Ltd. Etc.'

In this case, respondent No.2/complainant has entered into a compromise with the petitioner on 02.09.2023. The compromise deed is annexed herewith as Annexure P-3. At this stage, Mr. Kapil K. Gupta, Advocate puts in appearance on behalf of respondent No.2 and files his power of attorney which is taken on record. Registry is directed to tag the same at an appropriate place in the file.

CRM-M-55589-2023-2- Learned counsel for respondent No.2 very fairly concedes that the matter between the parties has been compromised and respondent No.2 has received the full and final payment through NEFT/UPI in the bank account of the complainant. The learned trial Court has recorded the statement of the complainant to the effect that the complainant wishes to withdraw the complaint filed under Section 138 of the Negotiable Instruments Act.

Learned trial Court vide order dated 09.09.2023 (Annexure P-4) has ordered the dismissal of the complaint as withdrawn on the basis of the statement suffered by respondent No.2/complainant.

The question which arises for consideration of this Court is whether on account of withdrawal of the complaint under Section 138 of the Negotiable Instruments Act on the basis of compromise, the impugned order dated 13.01.2021 deserves to be quashed?

The stand of learned counsel representing the petitioners is that the petitioners have been declared a proclaimed offender in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioners were never served before the proclamation was issued under Section 82 Cr.P.C. The petitioners have duly paid the amount involved in the cheque in question and both the parties have settled the matter amicably which has resulted in withdrawal of the complaint under Section 138 of the Negotiable Instruments Act. In the factual backdrop of this case, undisputedly, once the substantive offence already stands settled between the petitioners and respondent No.2, the impugned order dated 13.01.2021 under Section 82 of the Cr.P.C.

would be of no consequence.

Reliance in this regard has been placed upon the various pronouncements on the issue involved in the present case. In CRM-M438132018, 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 (Cri.) 790** and **Rajneesh Khanna Vs. State of Haryana and another, 2017(3) L.A.R. 555** wherein, in identical circumstances, the Coordinate Benches of this Court has held that since the main petition filed under Section 138 of the Negotiable Instruments Act stands withdrawn in view of an amicable settlement between the parties, therefore, the impugned order dated 13.01.2021 under Section 82 of the Cr.P.C. would be of no use.

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.”

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

This Court, while examining the facts and circumstances of the present case, is of the considered opinion that the view taken by the Coordinate Benches of this Court in the aforementioned decisions is correct. Once the substantive offence has been settled through compromise between the petitioners and respondent No.2, the impugned order dated 13.01.2021 passed under Section 82 of Cr.P.C. would not sustain either.

Accordingly the present petition is allowed. The impugned order dated 13.01.2021 under Section 82 Cr.P.C. along with all consequential proceedings arising therefrom, is hereby quashed *qua* the petitioners.

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