

Punjab and Haryana High Court

HARI PAL VERMA, J.

Rajneesh Khanna v. State Of Haryana

CRM-M-3813 of 2017.

26.10.2017.

IPC S. 174-A

Indian Penal Code, 1860 (XLV of 1860) Section 174-A - Not served at the given address - Subsequently granted anticipatory - Matter compromised between in complaint under [Section 138](#) of the NIA Act - Continuation of criminal proceedings under Section 174- A IPC would amount to abuse of process of law.

Mr. Rajesh Gupta, Advocate for the petitioner. Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.(ORAL) Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of order dated 05.09.2016 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ambala City in criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the NIA Act) titled as “Rajan Versus Rajneesh Khanna” vide which the petitioner has been declared as a proclaimed person and a direction was issued to the police to register an FIR under Section 174-A against the petitioner.

Prayer has also been made for quashing of resultant FIR No.387 dated 29.09.2016 under Section 174-A IPC registered at Police Station Ambala City (Annexure P-5).

Learned counsel for the petitioner states that the petitioner was never served in the case and, therefore, he could not appear before learned trial Court as he was not aware of the complaint under Section 138 of the NIA 1 of 3 Act pending against him. However, when the petitioner came to know that he has been declared as a proclaimed person, he had moved an application for anticipatory bail before the Court of Session, Ambala. Vide order dated 02.01.2017 passed by learned Additional Sessions Judge, Ambala, the said application was allowed and the petitioner was granted anticipatory bail. He further contends that even in the reply submitted by the police in the application seeking anticipatory bail, it was admitted by the police that the petitioner was not residing at the given address.

Learned counsel for the petitioner has further argued that even otherwise, the matter has been compromised between the parties and the respondent No.2-complainant has withdrawn the very complaint under Section 138 of the NIA Act filed against the petitioner. He states that in these circumstances, the impugned order dated 05.09.2016 as well as the

FIR in question along with all subsequent proceedings are liable to be quashed. In support of his contentions, he has relied upon the order dated 13.09.2017 passed by the coordinate Bench of this Court in 2017 PLRonline 0108 titled as *Vikas Sharma v. Gurpreet Singh Kohli* and another.

On the other hand, learned State counsel is fair enough to admit that in view of the reply submitted by the police, the petitioner was not served in the case personally as during verification, it was found that the petitioner was not residing at the given address.

I have heard learned counsel for the parties.

Perusal of the record reveals that non-appearance of the petitioner before learned trial Court is justified for the reason that he was not 2 of 3 served at the given address. Moreover, after passing of the impugned order dated 05.09.2016 by learned trial Court, the petitioner has been granted anticipatory bail by learned Additional Sessions Judge, Ambala vide order dated 02.01.2017. Therefore, in these circumstances particularly when the matter has been compromised between the parties and the respondent No.2- complainant has withdrawn the complaint under Section 138 of the NIA Act, continuation of criminal proceedings against the petitioner under Section 174- A IPC would amount to abuse of process of law.

Consequently, the impugned order dated 05.09.2016 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ambala City is set aside and FIR No.387 dated 29.09.2016 under Section 174-A IPC registered against the petitioner at Police Station Ambala City (Annexure P-5) as well as all subsequent proceedings arising therefrom are quashed qua the petitioner.

SS