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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 594/2014**

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Sunil Kumar Gautam, APP for
the State.

versus

PROCLAIMED OFFENDERS

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

09.08.2024

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1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') seeks the following prayers: -

“a. Set aside the order dated 17.04.2013 in Revision Petitions 112/13 to 126/13 passed by Sh. R.K Gauba, Ld. District & Sessions Judge, Saket Courts, New Delhi, and set aside the corresponding/ respective orders passed by Sh Sandeep Garg, Id. Metropolitan Magistrate-07 (South) and consequentially direct that Section 174- A IPC can be added against the accused by way of a supplementary chargesheet in each of the cases,

b. Pass any such order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. By way of the impugned common order dated 17.04.2013, the learned District and Sessions Judge, Saket Court, dismissed the revision petition filed by the State/petitioner challenging the order dated 15.12.2012 passed by the learned Metropolitan Magistrate in 14 FIRs and one DD entry under different Sections registered at P.S. Mehrauli.



3. The notice to the respondents herein will serve no purpose as they have already been declared proclaimed offenders.
4. The learned APP for the State submits that in the present FIRs, the respondents had been declared proclaimed offenders and *vide* order dated 15.12.2012, the learned Metropolitan Magistrate gave the following directions: -

“Accused Gajan Singh, Pyara Singh and Jarnail Singh @ Baggi are PO.

Accused Rajinder Singh, Raju Singh and Balvinder Singh on bail with counsel.

Process not issued. Let order dated 20.10.2012 be complied with afresh.

Accused Gajan Singh, Pyara Singh and Jarnail Singh @ Baggi were declared as PO vide order dated 25.07.2012 after they failed to appear in the court despite publication of proclamation u/s 82 Cr.PC against them and therefore, a prima facie case for commission of offence punishable u/s 174-A IPC is made out against them. However, Ld. Substitute APP for state submits that a supplementary chargesheet will be filed against them in the present case itself and they can be tried for offence punishable u/s 174-A IPC alongwith offence punishable u/s 325/34 IPC.

The offence punishable u/s 174-A IPC is a separate and distinct offence for which the accused are liable to be prosecuted and tried separately. The Hon’ble High Court of Delhi has recently observed in Crl.MC No. 4208/11 decided on 04.01.2012 titled as ‘Maneesh Goomer vs State’ :

" Para-9 Thus the police officer on a complaint u/s 174 A IPC is competent it to register FIR and after investigation thereon, file a charge sheet before the court of Magistrate, who can take cognizance thereon.

“Para-10 The above mentioned FIR for offence punishable u/s 174 A IPC is an independent cause of action.”

Accordingly, SHO. P.S. Mehrauli is directed to register an FIR u/s 174-A IPC against accused Gajan Singh, Pyara Singh and



Jarnail Singh @ Baggi and file a compliance report. Re-notify for arguments on charge on 06.02.2013. Copy of his order be sent to SHO, P.S, Mehrauli for compliance.”

5. Aggrieved by the aforesaid order, a revision petition was filed by the State and the same was dismissed by the impugned order. It is submitted by learned APP for the State that the learned ASJ while passing the impugned order has ignored the order passed by a Co-ordinate Bench of this Court in **State v. Proclaimed Offenders of Delhi and Ors., Crl.Rev.P. 47/2013 dated 29.01.2013**, wherein, while distinguishing the judgment of learned Single Judge of this Court in **Maneesh Goomer v. State, 2012 SCC OnLine Del. 66**, the order directing registering a separate FIR under Section 174A of the IPC was set aside. Similar view was taken by another Co-ordinate Bench of this Court in **State v. Proclaimed Offenders of Delhi and Ors., CRL.M.C. 2021/2010** decided on 11.08.2010. Learned APP for the State further submits that facts in the present petition are similar and therefore, the learned Sessions Judge erred in passing the impugned order.

6. Learned Sessions Judge in the impugned order following the judgment in **Maneesh Goomer (supra)** observed and held that offence under Section 174A of the IPC gives rise to an independent cause of action and, therefore, the said offence cannot be made part of prosecution and tried together by way of supplementary chargesheet as the same would be against provisions of Sections 218 to 220 of the CrPC. It was observed by the learned Session Judge that the since the offence under Section 174A of the IPC is distinct to the offence in the chargesheet earlier filed, any such charge under Section 174A of the IPC will have to be tried separately as per provisions under Section 218 of the Cr.P.C. It was further observed that since the Section 174A of the IPC



and the other offences for which the respondents were being prosecuted were not of the same kind, therefore, the same would not bring their case under Section 219 of the Cr.P.C.

7. A Co-ordinate Bench of this Court, *vide* judgment dated 23.02.2017 in **Purushottam Dev Arya v. CBI**, Criminal Revision Petition 182/2012 and **Anil Kumar Madan v. CBI**, Criminal Revision Petition 181/2012, has observed and held as under: -

“23. In the present case, when the petitioners did not put appearance deliberately and were declared absconders, supplementary charge-sheet for commission of offence under Section 174A IPC was filed by the Investigating Agency. Offence under Section 174A IPC, though independent in nature is an off-shoot of the initial charge-sheet pending trial before the CBI Court. No separate investigation is required to be conducted as the orders of the Court declaring the petitioners to be Proclaimed Offenders are part of the record in the main challan. Object and purpose to incorporate Section 174A IPC primarily is to ensure that the accused / suspects do not scuttle investigation or trial by remaining absconding without valid or sufficient reasons. In such a scenario, when the suspects or accused abscond, possibility of valuable evidence to be washed away cannot be ruled out. Since CBI had jurisdiction to investigate the main offence, cognizance by the Court for commission of offence under Section 174A IPC, its fall out, cannot be termed illegal or without jurisdiction.

24. This Court in ‘State vs. Proclaimed Offenders of Delhi and others’, CrI.No.2021/2010, decided on 11.08.2010 held that supplementary charge-sheet under Section 174 IPC can be filed or the offence under Section 174A IPC can be added in the main charge-sheet. Apparently, no fresh investigation was required to be carried out.

25. Well settled position is that a ‘case’ and a ‘counter-case’ one triable exclusively by the Sessions Court and the other not triable exclusively by the Court of Sessions can be tried by the Court of Sessions to avoid conflicting judgments. In ‘Sudhir & Ors. Vs. State of MP’, 2001 (2) SCC 688, it was categorically held that a Sessions Judge has the power to try any offence under the Indian Penal Code. It is not necessary for the Sessions Court that the offence should be one exclusively triable by the



Courts of Sessions. This power of the Sessions Court can be discerned from a reading of the Section 26 of the Code.

26. Seeking analogy from the said judgment, it can well be inferred that the offence under Section 174A IPC which arises out of the proceedings conducted during the main case, can be tried and disposed of by the same Court. Lodging of separate FIR for commission of offence under Section 174 IPC is not always required.”

8. In the aforesaid judgment, the challenge before this Court was with respect to the legality and correctness of an order passed by learned Special Judge, CBI whereby charges under Section 120B read with Section 174A of the IPC and Section 174A of the IPC were framed against them. It was contended on behalf of the petitioner therein that Section 174A of the IPC being an independent offence should not have been clubbed with the charges framed as per the main chargesheet.

9. Moreover, in **Maneesh Goomer** (*supra*), the Coordinate Bench was dealing with a situation, where in a complaint case under Section 138 of the Negotiable Instruments Act, 1881, the accused was declared proclaimed offender and the concerned Court directed registration of an FIR under Section 174 A of the IPC. The contention, therein, raised was that the FIR could not have been registered without following the procedure laid down in Section 195 of the Cr.P.C. Rejecting the said contention, it was observed and held as under: -

“9. As regards the next contention of the Petitioner that for a prosecution under Section 174-A IPC no cognizance can be taken on a charge-sheet but on a complaint under Section 195 Cr.P.C., it may be noted that Section 174-A IPC was introduced in the Code with effect from 23rd June, 2006. Section 195(1) Cr.P.C. provides that no Court shall take cognizance of offences punishable under Section 172 to 188 (both inclusive) of the IPC or of the abatement, or attempt to commit the said offences, except on the complaint in writing of the public servant



concerned or of some other public servant to whom he is administratively subordinate. Section 195 Cr.P.C. has not been correspondingly amended so as to include Section 174-A IPC which was brought into the Penal Code with effect from 23rd June, 2006. The Legislature was conscious of this fact and that is why though all other offences under chapter X of the Criminal Procedure Code are noncognizable, offence punishable under Section 174-A IPC is cognizable. Thus the Police officer on a complaint under Section 174-A IPC is competent to register FIR and after investigation thereon file a charge-sheet before the Court of Magistrate who can take cognizance thereon. Thus, I find no merit in the contention raised by the Learned Counsel for the Petitioner.

10. Adverting to the last contention of the learned counsel for the Petitioner that the process under Section 82 Cr.P.C. was illegal as the proclamation was not in the newspaper as directed by the Court but in the other newspaper, it may be noted that Section 82(2) Cr.P.C. provides for the procedure for publishing the proclamation. Clause (i) of Sub-Section (2) is mandatory in nature as it directs that the proclamation shall be publically read in some conspicuous place of the town in which the person ordinarily resides, shall be affixed in some conspicuous place of the house in which the person ordinarily resides, and shall be affixed in some conspicuous part of the Court-house. However, Clause (ii) of Section 82(2) Cr.P.C. is not mandatory and it states that the Court may also if it thinks fit direct a copy of the proclamation to be published in a daily newspaper circulated in the place in which such person ordinarily resides. Since Clause (ii) is not mandatory in nature, the non-adherence to the strict compliance thereon will not vitiate the process under Section 82 Cr.P.C. The abovementioned FIR for offence punishable under Section 174-A IPC is an independent cause of action and merely because the complaint case under Section 138 NI Act is settled, there is no reason that the abovementioned FIR be also quashed.”

10. The learned Metropolitan Magistrate in the order dated 15.12.2012 has referred to certain extracts of judgment in **Maneesh Goomer (supra)**, without appreciating the issue involved in the said judgment. Learned Sessions Judge while noting the judgment of this Court in **State v. Proclaimed Offenders of Delhi and Ors (supra)** proceeded to follow the judgment in **Maneesh Goomer (supra)** by observing as under: -



“22. Undoubtedly, in the context of a similar order passed in the course of proceedings arising out of FIR No. 21/02 under section 379/34 IPC of PS Paharganj, a learned single judge of Hon'ble High Court vide order dated 11.08.2010 in the case of Proclaimed Offenders of Delhi (supra) agreed with the arguments to such effect advanced for the State and the same view was followed by another learned single judge of Hon'ble High Court in order dated 29.01.2013 in the case of Declared Proclaimed Offenders of Delhi (supra).

23. But then, another co-ordinate bench of Hon'ble High Court presided over by Hon'ble Ms. Justice Mukta Gupta in the case of Maneesh Goomer (supra) after a detailed discussion of various arguments has been pleased to uphold a similar order passed by the court of Metropolitan Magistrate inter alia observing that offence punishable under section 174 A IPC gives rise to "an independent cause of action". Clearly, the view to the contrary in the other two orders was taken in the light of facts of the said cases. The said two orders do not lay down a general law prohibiting registration of FIR for offence under section 174 A IPC. On the contrary, the law laid down in Maneesh Goomer (supra) approves directions for registration of such FIR.

24. In the submission of the State in these revision petitions, the impugned orders suffer from material irregularity since the law laid down in Maneesh Goomer (supra) pertains to cases under section 138 Negotiable Instruments Act. The additional public Prosecutor argued that the dicta in Maneesh Goomer (supra) is "not applicable to case where State is a party". Though arguments to such effect were advanced and noted in the case of Proclaimed Offenders of Delhi (supra), there is nothing in the said order dated 29.01.2013 to indicate the same being upheld. There is nothing in the judgment in the case of Maneesh Goomer (supra) to jump to the conclusion that the approach of the Magistrate vis-a-vis offence under section 174 A IPC was upheld so as to be restricted only to complaint cases to the exclusion of State cases.

25. Thus, following the law laid down in the case of Maneesh Goomer (supra), it must be observed that the offence under section 174 A IPC gives rise to an independent cause of action”.

11. In the considered opinion of this Court, there is no dispute that Section 174A of the IPC is a separate offence but the same can be tried together with



other offences for which chargesheet already stands filed. This has been the consistent view taken by this Court as pointed out hereinabove. In **Maneesh Goomer** (*supra*), it is pertinent to note that there was no FIR in existence and the complaint case had already been withdrawn on account of compromise. Since the offence under Section 174A of the IPC was a distinct offence, therefore, the Coordinate Bench held that FIR can be registered separately. The judgment does not say that a separate FIR has to be registered as a rule. The facts in the present case are clearly distinguishable.

12. In view of the above, the impugned order dated 17.04.2013 passed by the learned District and Sessions Judge, Saket Courts and order dated 15.12.2012 passed by the learned Metropolitan Magistrate are hereby set aside.

13. The petition is allowed and disposed of accordingly.

14. Pending application, if any, also stands disposed of.

15. Copy of the order be communicated to learned Trial Court for necessary information.

16. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

AUGUST 09, 2024/nk

Click here to check corrigendum, if any