

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 504/2016 & CrI.M.A. 2089/2016**

Date of Decision : April 26th, 2016

M/S SUNDRI APPARELS (INDIA) PVT. LTD. & ORS. ...Petitioners

Through **Mr.Shailendra Singh, Adv.**

versus

STATE (NCT DELHI) & ANR

...Respondents

Through **Ms.Meenakshi Chauhan, APP.**

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") read with Article 227 of the Constitution of India has been filed by the petitioners for quashing of order dated 17.04.2015 vide which the petitioners were declared Proclaimed Offenders and order dated 20.01.2016 vide which the learned Metropolitan Magistrate directed the SHO concerned to lodge FIR against the petitioners under Section 174A IPC.

2. The facts, in brief, are that the petitioner no.1-Sundri Apparels (India) Pvt. Ltd. is a Company incorporated under the Companies Act, 1956 and petitioner nos.2 to 5, namely, B.D. Mohnani, Suresh

Mohnani, Mahesh Mohnani and Manoj Mohnani are its directors. The respondent No.2-Rajesh Talwar had filed a complaint under Sections 138/141/142 of the Negotiable Instruments Act, 1881 against the petitioners-herein alleging therein that the petitioner nos.2 to 5 on behalf of petitioner no.1 approached the respondent no.2 in May, 2008 for advancing them a sum of Rs.20 lakhs on interest for promotion of their business. The respondent no.2 advanced Rs.20 lakhs to the petitioners by way of cheque dated 25.05.2008. In discharge of their liability, the petitioner nos.2 to 5 issued eight cheques in favour of the respondent no.2. On presentation, the said cheques were dishonoured with the remarks "A/c Closed". The respondent no.2 got issued a legal notice dated 16.08.2012, but despite its receipt, the petitioners have failed to make the payment of dishonoured cheques.

3. During the pendency of the complaint, the petitioner nos.2 to 5 failed to appear before the Court below on 10.12.2014, therefore, the Court issued NBWs against them and issued the process under Section 82 Cr.P.C. Vide order dated 17.04.2015, the petitioner nos.2 to 5 were declared proclaimed offenders and vide order dated 20.01.2016, SHO concerned was directed to lodge the FIR under Section 174A IPC against them. Feeling aggrieved by the same, the present petition has been filed by the petitioners for quashing of order declaring them proclaimed offenders and for directing the SHO to register the FIR under Section 174A IPC.

4. Argument advanced by the learned counsel for the petitioner is that the petitioners are ready to settle the matter amicably and in pursuance of the same, they have already paid Rs.50,000/- to the

respondent no.2. The petitioner no.1-company has gone into liquidation. It is further argued that the purpose of Section 82/83 Cr.P.C. is to secure the presence of the accused persons and the petitioners are willing to appear before the Court. The order registering FIR under Section 174A IPC has tarnished the reputation of the petitioners. It is further argued that the petitioner no.2 is 87 years old and is a cancer patient, whereas petitioner nos.3 to 5 are sons of petitioner no.2.

5. In support of the above contentions, judgment in the case of *D.N. Sood & ors. v. Inspecting Asstt. Commissioner of Income Tax 105 (2003) DLT 33* has been relied upon in which it was observed that the purpose of proceedings under Section 82 and 83 Cr.P.C. is to secure presence of the petitioners before the Court and in view of the undertaking given by him to attend the trial court, the order issuing process under Sections 82 and 83 Cr.P.C. was set aside. On similar point, judgments in the case of *Praveen Juneja & Anr. v. State of Delhi & Anr. 118 (2005) DLT 28* and *Kulwant Singh v. Air Customs 2004 (72) DRJ 200* have also been relied upon.

6. There is no dispute with regard to the ratio of judgments relied upon by the petitioners. But the fact remains that summons were issued against the petitioners on 03.10.2012. On 05.04.2013, the petitioners appeared through counsel. The Id. Magistrate issued NBWs against the petitioners on 03.08.2013. The petitioners appeared on 21.09.2013. Again NBWs were issued against the petitioners on 17.01.2014 as they failed to appear before the Court. On 22.01.2014, NBWs were cancelled. On 10.12.2014, fresh NBWs were issued and

the process under Section 82 Cr.P.C. Vide order dated 17.04.2015, petitioners were declared proclaimed offenders.

7. The record reveals that firstly the NBWs were issued against the petitioner nos.2 to 5 and then the process under Section 82(1) Cr.P.C. was issued against them for issuance of proclamation. The proclamation issued under Section 82(1) Cr.P.C. results into two situations. Firstly, where a proclamation is published under Section 82(1) Cr.P.C. in respect of offence under Section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 400, 402, 436, 449, 459 or 460 of IPC and such person fails to appear, the Court may declare him a proclaimed offender. Secondly, FIR is to be registered under Section 174A IPC where the accused failed to appear despite proclamation and declaration.

8. The legislature was wise enough while incorporating Section 174A in the Code. Section 174A IPC is divided into two parts. First part deals with the situation where the proclamation is issued under Section 82(1) Cr.P.C. and when the accused failed to appear despite its publication, he is to undergo imprisonment upto three years or with fine or with both. The second part of Section 174A relates to the declaration issued by the Court under Section 82(4) Cr.P.C. wherein serious offences have been prescribed and despite declaring a person as proclaimed offender, when he fails to appear, the punishment provided is imprisonment upto seven years and payment of fine.

9. In the present case, Section 138 of the N.I. Act is not mentioned in Section 82(4) of the Cr.P.C. for declaring the accused as proclaimed offender. Therefore, the order dated 17.04.2015 declaring the

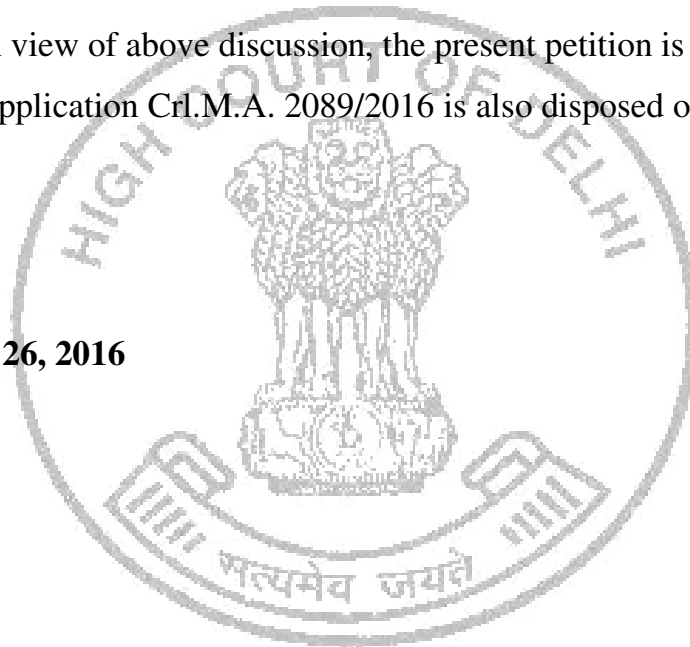
petitioner nos.2 to 5 as proclaimed offenders under Section 82(4) Cr.P.C. is hereby set aside.

10. However, it is made clear that the NBWs issued against the petitioners and the proclamation issued against them under Section 82(1) Cr.P.C. are still subsisting and operative as there is no challenge to the same. The order directing registration of FIR under Section 174A IPC is a distinct and separate offence and no ground is made out to quash the same.

10. In view of above discussion, the present petition is disposed of.

11. Application CrI.M.A. 2089/2016 is also disposed of.

APRIL 26, 2016
dd



(P.S.TEJI)
JUDGE