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

**DECIDED ON : 10<sup>th</sup> MAY, 2016**

+ **CRL.REV.P.331/2015**

MUSTKEEM @ SHANU ..... Petitioner

Through : Mr.Arun Sharma, Advocate.

Versus

THE STATE (NCT OF DELHI) ..... Respondent

Through : Mr.Amit Gupta, APP.

**CORAM:  
HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J. (Oral)**

1. Present revision petition has been preferred by the petitioner to challenge the legality and correctness of an order dated 25.02.2015 by which charge under Section 174A IPC was framed against the petitioner. Petition is contested by the respondent / State.

2. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the petitioner was facing trial in case FIR No.84/2014 registered at PS Darya Ganj. Initially, the said FIR was registered on 17.02.2014 under Section 307 IPC. Subsequently, the victim succumbed to the injuries, and finally, charge-sheet was filed against one Danish @ Behra for committing offences under Sections 302/307/34

IPC; co-accused Ashraf was additionally charged for commission of offences under Sections 174A/201 IPC. The present petitioner was also a suspect in the said case. During investigation, efforts were made to find him out but he could not be traced. Non-bailable warrants were issued to procure his presence but it remains unexecuted. The Trial Court issued process under Section 82 Cr.P.C. and finally after recording statement of HC Rameshwaram, the petitioner was declared Proclaimed Offender on 28.06.2014. Subsequently, on 11.11.2014 the petitioner surrendered in the Court and joined the investigation. During police remand, efforts were made to recover crime weapon but it could not be traced. After completion of investigation, a supplementary charge-sheet was filed against the present petitioner in the Court.

3. Vide order dated 25.02.2015, the Trial Court discharged the petitioner for commission of offence under Sections 302/201/34 IPC. However, charge under Section 174A IPC was framed against the petitioner as he had deliberately avoided his appearance before the Court.

4. Learned counsel for the petitioner urged that since the petitioner has already been discharged under Section 302 IPC, he was not one of the authors of the crime and his abscondance was not deliberate to avoid the investigation. No useful purpose will be served to charge him under Section 174A when he has already been discharged of the main offence for which he was being traced. Learned Addl. Public Prosecutor would submit that mere discharge of the petitioner is not enough to absolve him of his crime under Section 174A IPC.

5. Undoubtedly, the petitioner was one of the suspects in the murder case. Allegations against him were that he along with his associates

Danish @ Behra and Ashraf committed Firoz Khan's murder. It has further come on record in the disclosure statement of the co-accused Danish @ Behra that the crime weapon i.e. knife was handed over to the present petitioner after inflicting injuries to the victim. The Investigating Agency attempted to apprehend the petitioner, however, he remained absconded. Despite issuance of coercive process, he could not be traced. Finally, proceedings under Section 82 Cr.P.C. were initiated against the petitioner and he was declared Proclaimed Offender by the Court vide order dated 28.06.2014.

6. Mere discharge of the petitioner under Sections 302/201 IPC does not absolve him of liability for offence under Section 174A IPC. The Investigating Agency was deprived of the valuable time during which it could make efforts to find out the crime weapon at the instance of the petitioner. Since the petitioner surrendered after a considerable delay even after he was declared Proclaimed Offender on 11.11.2014, the crime weapon could not be recovered. Non-recovery of crime weapon was one of the reasons to discharge the petitioner in the main case.

7. I find no illegality or material irregularity in the impugned order where charge under Section 174A IPC has been framed. It is for the petitioner to prove during trial whether abscondance was bona fide or that due process was not followed or adhered to by the Trial Court before declaring him Proclaimed Offender. It is relevant to note that the proceedings by which the petitioner was declared Proclaimed Offender were never challenged at relevant time.

8. In '*Maneesh Goomer vs. State*', 2012 SCC OnLine Del 66, this Court held that Section 174A IPC is an independent cause of action and

merely because the complaint case under Section 138 Negotiable Instruments Act was settled, there was no reason that the FIR could also be quashed.

9. Considering the facts and circumstances of the case, the revision petition lacks merit and is dismissed.

**(S.P.GARG)**  
**JUDGE**

**MAY 10, 2016 / *tr***

