

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

RESERVED ON : 9th NOVEMBER, 2016
DECIDED ON : 23rd FEBRUARY, 2017

+ **CRL.REV.P. 182/2012 & CRL.M.A.No.4191/2012**

PURUSHOTTAM DEV ARYA Petitioner

Through : Mr.Jitendra Sarin, Advocate.

versus

CBI

..... Respondent

Through : Ms.Sonia Mathur, Standing Counsel
with Mr.Sushil Kumar Dubey &
Mr.Abhishek Chauhan, Advocates.

AND

+ **CRL.REV.P. 181/2012 & CRL.M.A.No.4188/2012**

ANIL KUMAR MADAN Petitioner

Through : Mr.Nitin Soni, Advocate with
Mr.Kewin Kunjappy, Advocate.

versus

CBI

..... Respondent

Through : Ms.Sonia Mathur, Standing Counsel
with Mr.Sushil Kumar Dubey &
Mr.Abhishek Chauhan, Advocates.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present petitions have been preferred by the petitioners under Section 482 Cr.P.C. to challenge the legality and correctness of an order dated 26.03.2012 of learned Special Judge, CBI by which charges under

Section 120B read with Section 174A IPC and Section 174A IPC were framed against them. The petitions are contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. It is not in dispute that the petitioners along with others are facing trial in a case registered vide FIR bearing RC No.DAI/2010/A/044 registered under Sections 120B/420 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act.

3. Admittedly, FIR was lodged on 29.11.2010 on the basis of 'source information'. The petitioners were arrayed as accused No.7 and 8 respectively. By an order dated 23.05.2011, learned Special Judge took cognizance of the aforesaid offences. It is urged that instead of issuing summons or warrants under Section 204 Cr.P.C. for appearance of the petitioners, the Trial Court straight away issued proclamation under Section 82 Cr.P.C. on the basis of report on the warrants procured by the Investigating Agency. The proclamation required the petitioners to appear on 14.07.2011 at 10.00 a.m.

4. On 14.07.2011, the petitioners did not appear personally due to pendency of anticipatory bail before this Court. They appeared through advocate before the Trial Court who filed an undertaking as desired by the Court to appear within 5 – 6 working days after the disposal of the anticipatory bail application on 15.07.2011.

5. It is averred that on 21.07.2011 the learned Special Judge without cogent reasons rejected the 'undertaking' furnished by the petitioners despite pendency of anticipatory bail petition. After recording statement of the process server regarding execution of the process under

Section 82 Cr.P.C., the Trial Court issued order of attachment of immovable properties.

6. The petitioners approached this Court for quashing of the process issued under Section 82 Cr.P.C. vide CrI.M.C.2136/2011 and also moved bail applications No. 885/2011 and 882/2011 respectively for anticipatory bail. Both were dismissed vide orders dated 02.08.2011. SLP (CrI.) Nos. 5991/2011 and 5989/2011 were dismissed as 'withdrawn' on 11.08.2011.

7. Undisputedly, the petitioners surrendered on 16.08.2011 before the learned Special Judge and were sent to judicial custody. On 18.08.2011, the petitioners were remanded to police custody for five days. Subsequently, they were lodged to judicial custody. The petitioners have since been granted bail in the main case i.e. CC No.22/11 on 23.01.2012. In CC No.24/11 relating to Section 174A read with Section 120B IPC, the petitioners were admitted to bail on 16.02.2012.

8. On 08.11.2011, CBI filed supplementary charge-sheet under Section 174A read with Section 120B IPC in the main case i.e. CC No.22/11 and the impugned charge was framed therein. Learned counsel for the petitioners urged that the CBI Court had no jurisdiction to issue process under Sections 82/83 Cr.P.C. as they had put appearance before the Trial Court through counsel and had furnished the required 'undertaking'. Proclamation as envisaged under Section 82 Cr.P.C. did not specifically require 'personal appearance of the petitioners on the date and time mentioned therein.' Appearance through their counsel was due compliance of the proclamation issued under Section 82 Cr.P.C. Moreover, petitioners' applications under Section 438 Cr.P.C. for seeking anticipatory bail was

pending consideration before this Court; they could not have been deprived of their fundamental right to seek legal remedies. There was no intentional default on behalf of the petitioners to put appearance before the Trial Court and it was due to sufficient and valid reasons.

9. Learned counsel further urged that CBI Court had no jurisdiction to take cognizance of the charge-sheet filed under Section 174A IPC; CBI had no jurisdiction or power or authority to investigate an offence under Section 174A IPC. CBI Court has erroneously taken cognizance of offence under Section 174A IPC, though it was not a part of the main charge-sheet. As per Schedule under the Criminal Procedure Code, 1973 offence under Section 174A IPC is exclusively triable by the Court of Magistrate. Offence under Section 174A IPC even does not fall within the three categories of cases referred to Sections 3 & 4 of the PC Act. Section 195 Cr.P.C. prescribes that no Court can take cognizance of any offence punishable under Sections 174 to 188 IPC (Both inclusive) without a complaint in writing. No such complaint was filed by a public servant.

10. Learned counsel further urged that order on charge cannot be sustained for the aforesaid reasons. The petitioner had not avoided appearance before the Trial Court deliberately and it was due to compelling circumstances beyond their control. Applications moved before the Trial Court for seeking personal exemption through counsel were declined.

11. Reliance has been placed on the authorities '*State of Gujarat & Ors vs. Dilipbhai Nathjibhai Patel & Anr.*', AIR 1998 SC 1429; '*M/s.Oswal Pressure Die Casting Industry, Faridabad vs. Presiding Officer & Anr.*', AIR 1998 SC 1431.

12. Learned Standing Counsel controverting the contentions urged that the petitioners had deliberately avoided to appear before the Investigating Agency and were rightly declared Proclaimed Offender by following due process. Since the petitioners were declared Proclaimed Offender, prima facie, they are liable to be convicted for committing offence under Section 174A IPC. Reliance has been placed on the authorities '*Maneesh Goomer vs. State*', 2012(1)JCC 465; '*Kamlesh Kumar & Ors. Vs. State of Jharkhand & Ors.*', 2013 (15) SCC 460.

13. Undisputedly, the petitioners did not put appearance before the Trial Court despite issuance of non-bailable warrants. No cogent document has emerged on record to infer if the petitioners were prevented by compelling reasons not to appear personally before the Trial Court on various dates. During this period, the petitioners availed various other legal remedies but did not opt to appear in compliance of the process issued by the Trial Court. Finally, the Investigating Agency was forced to move the CBI Court to get Non-Bailable Warrants against them to procure their presence. Even issuance of Non-Bailable Warrants had no impact upon the petitioners and they avoided their appearance in person. Instead of putting personal appearance, their counsel put appearance and prayed for five or six working days to put appearance after the disposal of their anticipatory bail applications. The undertakings furnished on 15.07.2011 by the petitioners show that they were very much available but opted not to appear before the Court. Furnishing the undertakings to appear after five or six days of the disposal of the anticipatory bail applications was not due compliance of the directions to appear personally before the Court. It is relevant to note that even after dismissal of their anticipatory bail applications, the petitioners

avoided to appear. Only when they exhausted all their remedies up to the Apex Court, they surrendered before the Trial Court on 16.08.2011.

14. It is a matter of record that the petitioners had filed CrI.M.C.2136/2011 to quash the process issued under Section 82 Cr.P.C. By a detailed order dated 02.08.2011 the said petition was dismissed. This Court observed that the Trial Court was within its jurisdiction to proclaim them as absconders under Section 82 Cr.P.C. after their non-appearance pursuant to the issuance of Non-Bailable Warrants. The petitioners cannot be permitted to re-agitate all these issues. It is relevant to note that the bail applications No. 885/2011 and 882/2011 filed by the petitioners respectively came to be dismissed by this Court by an order dated 02.08.2011. These orders were challenged by the petitioners by filing SLP (CrI.) Nos.5991/2011 and 5989/2011 (Annexure 'P-9') respectively. The petitioners further opted to withdraw the petitions praying that the applications under Section 439 Cr.P.C. to be filed be directed to be disposed of immediately. Needless to say, when the petitioners failed to avail any relief whatsoever, they surrendered before the Court on 16.08.2011. They remained in CBI custody till 23.08.2011. Since the petitioners had deliberately avoided to appear before the Trial Court and despite rejection of their applications seeking personal exemption they did not bother to appear, issuance of process under Section 82 Cr.P.C. cannot be faulted.

15. Relying on '*State of U.P. and others vs. Sushil Kumar Katiyar*', MANU/UP/0252/16 decided on 19.02.2016, learned counsel for the petitioner urged that Section 195 Cr.P.C. clearly barred the Court from taking cognizance of any offences punishable under Sections 172 to 188 IPC. Provision of Section 195 Cr.P.C. is mandatory and the Court has no

jurisdiction to take cognizance of any offence mentioned therein unless there is a complaint in writing by the public servant.

16. At the outset, it may be mentioned that proceedings in '*State of U.P. and others vs. Sushil Kuamr Katiyar*' (Supra) were quashed on various grounds where the Court below had not discussed as to how the Court was satisfied that the offence under Section 174A IPC was made out; when the process under Section 82 Cr.P.C. was issued and on which date, he had to appear and whether after the attachment of immovable properties, the proceedings of the criminal case under Section 174A IPC could be continued. Moreover, the respondent therein had already been discharged from the scheduled offences. It was observed that permission to continue with the proceedings of criminal case under Section 174A IPC would only amount to his harassment which was not the intention of the legislature. It is not the case in the instant petitions as the petitioners are facing trial for commission of serious offences.

17. This Court in '*Maneesh Goomer vs. State*', 2012(1)JCC 465 (Crl.M.C. 4208/2011) decided on 04.01.2012 has categorically held that Section 195 Cr.P.C. has not been correspondingly amended so as to include Section 174A IPC which was brought into the Penal Code with effect from 23.06.2006.

18. Section 174A IPC was introduced in the Code with effect from 23.06.2006 and Section 195A Cr.P.C. which provides that no Court shall take cognizance of offences punishable under Sections 172 to 188 IPC (Both inclusive) or of the abetment of committing the offence, except by complaint in writing by the public servant or of some other public servant to whom he is administratively subordinate, was a part of the Criminal Procedure Code

since 1974 when the new Criminal Procedure Code came into force. No corresponding amendment was brought into Section 195 (1) (a) in the year 2006 when a new offence, by adding Section 174A was introduced in Indian Penal Code. By no stretch of imagination, it can be inferred or presumed that Section 174A would be deemed to be included in between Section 172 to Section 188 IPC.

19. This Court in '*Maneesh Goomer vs. State*', 2012(1)JCC 465 held :

“....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. ”

20. This judgment has been followed in ‘*Moti Singh Sikarwar vs. State of U.P. and Ors*’, MANU/UP/2481/2016, decided on 29.11.2016 by the High Court of Allahabad. In the said judgment, it was observed that bar created by Section 195 (1) (a) Cr.P.C. would not apply to the provisions of section 174A IPC. It held:

“21. The reasons are as follows:

"1. It is to be noted that all the offences under Section 172 to 188 I.P.C. (both inclusive) are non-cognizable and bailable, whereas Section 174-A I.P.C. which provides for punishment upto 7 years imprisonment and fine, in case the offender fails to appear at the specified place and the specified time, as required by the proclamation published under Section 82 Cr.P.C., is cognizable and non-bailable. The legislature was conscious of this fact and that is why while introducing Section 174-A in the I.P.C. in the year 2006, it made no corresponding amendment in Section 195 (1)(a) Cr.P.C. so as to include Section 174-A I.P.C. in between all the non-cognizable offences and bailable from Sections 172 to 188 I.P.C.

2. It cannot be said that due to inadvertence, the corresponding amendment in Section 195(1)(a) Cr.P.C., was left to be made by the legislature. It is noteworthy that Section 195 has been correspondingly amended in the year 2006, by amending the exception clause of it. Had there been any intention on the part of the legislature to include Section 174-A I.P.C. in

Section 195(1)(a) Cr.P.C. it would have definitely correspondingly amended Section 195(1)(a) Cr.P.C. also.

3. Section 154 of Code of Criminal Procedure provides for information in cognizable cases and the concept of "locus standi" has been completely washed off by this section, as any person can set the law into motion, in case any cognizable offence is noticed by him, by registering a first information report. The public interest demands that criminal justice should be swift and sure and the court should not let the guilty scot free only on the basis of mere some technicalities. Section 460 Cr.P.C. is also based on the same principle.

4. The basic principle of law is that one, who seeks equity should do equity. In other words the persons, who seeks equitable reliefs, should come before the court with clean hands. The accused has no right to choose the mode by which he is to be prosecuted specially in the circumstances when he has failed to comply with the orders of the court and is prolonging the matter by filing one case after another.

5. The Hon'ble Delhi High Court in Maneesh Goomer's case (supra) has held that Section 195 Cr.P.C. has not been correspondingly amended so as to include section 174-A I.P.C., which was brought into the Penal Code with effect from 23rd June 2006 and there is no reason to deviate with the view of Hon'ble Delhi High Court."

22. In view of the above discussion, this court is of the considered view that the bar of Section 195 (1)(a) Cr.P.C. is not applicable to the present case and a private person is

competent to lodge a complaint or even an F.I.R. under Section 174-A I.P.C.”

21. Bar of Section 195 (1) (a) Cr.P.C. is not applicable to the facts and circumstances of this case.

22. Placing reliance on *Mohd.Jamal @ Ranjana Vs. State*, Cr.A. No. 391/2013 decided on 23.05.2013 by this Court, learned counsel for the petitioner urged that CBI Court had no jurisdiction to take cognizance of the offence under Section 174A IPC as it was triable by the Court of Magistrate. It is not in dispute that Special Judge, CBI Court is a Court of original criminal jurisdiction and exercises all the powers of a Magisterial Court. Thus, cognizance taken for the offence under Section 174A IPC cannot be faulted.

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.

27. Prima facie, there was sufficient and enough material before the Court to proceed for commission of offence under Section 120B IPC read with Section 174A IPC and Section 174A IPC. Arguments regarding due procedure before declaring the petitioners 'proclaimed offenders' and whether the petitioners were prevented by compelling circumstances and

there was no intentional default in non-appearance are all subject matter of trial.

28. In the light of above discussion, the petitions being devoid of merits are dismissed.

29. Observations in the order shall have no impact on merits of the case.

(S.P.GARG)
JUDGE

FEBRUARY 23, 2017 / *tr*

