

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

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

+ **CRL.M.C. 4031/2011**

A KRISHNA REDDY

..... Petitioner

Through : Mr.Rajesh Anand, Advocate with
Ms.Radha, Advocate.

versus

CBI THR. DIRECTOR

..... Respondent

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

+ **CRL.M.C. 4149/2011**

A KRISHNA REDDY

..... Petitioner

Through : Mr.Rajesh Anand, Advocate with
Ms.Radha, Advocate.

versus

CBI

..... Respondent

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

AND

+ **CRL.REV.P. 180/2012**

A KRISHNA REDDY

..... Petitioner

Through : Mr.Rajesh Anand, Advocate with
Ms.Radha, 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. In Crl.M.C. 4031/2011, the petitioner - A Krishna Reddy impugns an order dated 29.03.2011 of learned Special Judge, CBI in CC No.22/11 by which Non-Bailable Warrants were issued against him.
2. In Crl.M.C. 4149/2011 challenge is to the charge-sheet dated 08.11.2011 filed by CBI in the Court of Special Judge CBI, New Delhi and Order dated 08.11.2011 taking cognizance of the offence under Section 174A IPC in CC No.25/11.
3. Crl.Rev.P. 180/2012 has been preferred by the petitioner to challenge the legality and correctness of order dated 26.03.2012 of learned Special Judge, CBI by which charge under Section 174A IPC was framed against him in CC No.25/11.
4. The petitions are contested by the respondent / CBI.
5. I have heard the learned counsel for the parties and have examined the file. It is not in dispute that the petitioner along with others is facing trial in a case 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. The FIR was lodged on 29.11.2010 on the basis of source information.
6. Admittedly, on 07.02.2011 CBI searched the petitioner's premises at Hyderabad and sought for certain documents under Section 91 Cr.P.C. Petitioner's claim is that voluminous documents numbering 24 were promptly handed over to CBI. On 10.02.2011 CBI directed him to furnish more documents. On 11.02.2011, on CBI's instructions, the petitioner went to the office of CBI at CGO complex and was interrogated. He was asked

orally to appear on 12.02.2011 which he did. He was again asked to appear on 13.02.2011 under Section 160 Cr.P.C.

7. Petitioner's contention is that he left for Hyderabad on 13.02.2011 due to illness of his wife and informed the Investigating Officer about it by fax from Hyderabad. He also filed W.P.(Crl.) No.241/2011 before this Court on 15.02.2011. On 17.02.2011, the Investigating Officer again sent a fax to produce certain documents on 21.02.2011 to CBI. Since these documents were not available, the petitioner informed CBI about his inability to comply it. On 25.02.2011 he was again asked to appear before the Investigating Officer by fax on 02.03.2011 at 10.30 a.m. Since the petitioner's wife was in critical condition on 01.03.2011, he sent a letter requesting to defer the enquiry for ten days. On 08.03.2011 again CBI issued another notice under Section 91 Cr.P.C. by fax requiring to produce certain documents and also to appear personally on 11.03.2011. On 10.03.2011 by fax he informed the Investigating Officer his inability to appear in person due to disturbance because of violent agitation regarding separate Telangana State and also due to ill health of his wife. Request was made to postpone the inquiry till 25.03.2011.

8. Further case of the petitioner is that on 28.03.2011 application filed under Section 438 Cr.P.C. (Crl.P.No.2178/2011) was dismissed by the Hon'ble High Court of Andhra Pradesh. It is alleged that on 29.03.2011 CBI got issued Non-Bailable Warrants and search warrants against him. On 31.03.2011, search was conducted at his residential as well as official premises; the petitioner was away in Madhya Pradesh in connection with his contract work that time.

9. On 20.05.2011, CBI filed charge-sheet showing the petitioner to be one of the accused. On 23.05.2011, Special Judge, CBI issued process under Section 82 Cr.P.C. to declare him Proclaimed Offender. Objections filed on 06.06.2011 were dismissed vide order dated 15.06.2011.

10. Admittedly, Revision Petition No. 290/2011 was filed before this Court to challenge orders dated 15.06.2011 and 23.05.2011.

11. On 14.07.2011, application seeking personal exemption was moved before the CBI Court which was dismissed. On 20.07.2011, W.P.(Crl.) No. 241/2011 was dismissed as withdrawn. Crl.Rev.P. 290/2011 resulted in its dismissal by an order dated 02.08.2011. Bail Application 914/2011 came to be dismissed on 02.08.2011. SLP (Crl.) No.6069-6070/2011 filed by the petitioner to challenge the order dated 02.08.2011 of this Court was dismissed on 17.08.2011.

12. Admitted case is that the petitioner surrendered before CBI Court on 20.08.2011 and was taken into custody. He remained in custody till 30.08.2011 and thereafter lodged to judicial custody. On 08.11.2011, CBI filed supplementary charge-sheet for commission of offence under Section 174A IPC. The CBI Court took cognizance vide order dated 08.11.2011. Subsequently, charge under Section 174A IPC was framed on 26.03.2012.

13. Learned counsel for the petitioner urged that the CBI Court had no jurisdiction to issue Non-Bailable Warrants against him vide order dated 29.03.2011 as the petitioner was not named in the FIR and was not an 'accused' at the relevant time. The petitioner had appeared before the Investigating Agency and had furnished the relevant documents. The

petitioner had no intention to avoid appearance before the Investigating Agency but it was due to ill health of his wife.

14. Learned counsel further urged that CBI Court had no jurisdiction to take cognizance of the charge-sheet filed under Section 174A IPC; CBI has 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 in 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.

15. 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 his control. An application was moved before the Trial Court for seeking personal exemption through counsel which was declined.

16. 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.

17. Learned Standing Counsel for CBI controverting the contentions urged that the petitioner had deliberately avoided to appear

before the Investigating Agency and was rightly declared Proclaimed Offender by following due process. Since the petitioner was declared Proclaimed Offender, prima facie, he was 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.

18. Undisputedly, the petitioner did not put appearance before the Investigating Agency despite various notices sent to him on various dates. No cogent document has emerged on record to infer if the petitioner was prevented by compelling reasons not to produce the document sought by the Investigating Agency and not to appear personally on various dates given to him. During this period, the petitioner availed various other legal remedies but did not opt to appear before the Investigating Agency. Finally, the Investigating Agency was forced to move the CBI Court to get Non-Bailable Warrants against him to procure his presence. Even issuance of Non-Bailable Warrants had no impact and he avoided appearance. When his official and residential premises were searched pursuant to the search warrants at Hyderabad, the petitioner was not found present. Allegedly, he was away to Madhya Pradesh. No sufficient and plausible explanation has surfaced as to what compelled the petitioner to be away to a particular location in Madhya Pradesh to meet any emergency. Process under Sections 82 – 83 Cr.P.C. issued against the petitioner was contested by filing objections. The objections came to be dismissed but the petitioner did not submit himself before the Investigating Agency.

19. It is a matter of record that all these objections / pleas were taken by the petitioner in Crl.Rev.P. 290/2011 decided by this Court on

02.08.2011 seeking setting aside of the orders dated 15.06.2011 and 23.05.2011 and for quashing the proceedings under Section 82 Cr.P.C. This Court observed that the Trial Court was within its jurisdiction to proclaim him as an 'absconder' under Section 82 Cr.P.C. after his non-appearance pursuant to issuance of Non-Bailable Warrants. The petitioner cannot be permitted to re-agitate all these issues.

20. It is relevant to note that Bail Application No.914/2011 filed by the petitioner came to be dismissed by this Court by an order dated 02.08.2011. These orders were challenged by the petitioner by filing SLP (Annexure P11). The petitioner, however, opted to withdraw the said petition praying that the application under Section 439 Cr.P.C. to be filed be directed to be disposed of immediately. Needless to say, when the petitioner failed to avail any relief whatsoever, he surrendered before the Court on 20.08.2011. He remained in CBI custody till 30.08.2011. Since the petitioner had deliberately avoided to appear before the Trial Court and despite rejection of his application seeking personal exemption, he did not bother to appear, order issuing Non-Bailable Warrants against him under challenge in Crl.M.C. 4031/2011 cannot be faulted.

21. Relying upon '*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.

22. 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 petition as the petitioner is facing trial for commission of serious offences.

23. 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.

24. 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 offence 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 the 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.

25. 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. ”

26. 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.”

27. Bar of Section 195 Cr.P.C. is not applicable to the facts and circumstances of this case.

28. Placing reliance on *Mohd.Jamal @ Ranjana Vs. State*, CrI.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 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.

29. In the present case, when the petitioner did not put appearance deliberately and was declared ‘absconder’, 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 petitioner to be Proclaimed Offender 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.

30. 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 174A 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.

31. Well settled position is that a 'case' and '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.

32. 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.

33. Prima facie, there was sufficient and enough material before the Court to proceed for commission of offence under Section 174A IPC. Arguments regarding due procedure before declaring the petitioner 'proclaimed offender' and whether the petitioner was prevented by

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

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

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

(S.P.GARG)
JUDGE

FEBRUARY 23, 2017 / *tr*

