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

+ CRL.M.C. 1649/2016

SUNITA SHARMA Petitioner

Through: Mr. Vikas Sharma, Adv.

versus

STATE Respondent

Through: Kamal Kr. Gheir, APP for State with
SI R.S. Tyagi, PS Saket.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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31.01.2018

Vide the present petition, the petitioner seeks quashing of FIR No. 316/2013, PS Saket registered under Section 174A of Indian Penal Code, 1860.

It has been submitted by the petitioner to the effect that the said FIR had been registered pursuant to the directions vide order dated 11.01.2013 under Section 156(3) of Cr.PC, 1973 of the Court of learned MM (South)-07, Saket, New Delhi for registration of the FIR and thus FIR No. 12/2013, PS Mehrauli under Section 420 Indian Penal Code, 1860, had been registered against the petitioner whereafter non-bailable warrants had been issued against the petitioner vide order dated 30.05.2013, whereafter, the proceedings under Section 82 of Cr.PC were initiated against the petitioner, in view of the factum of the report on process served being received to the effect that NBWs issued against the petitioner had been received

unexecuted as the petitioner was concealing herself and was absconding and on 07.08.2013 the statement of Constable Kailash, CW-1 was recorded wherein he deposed that the process under Section 82 Cr.PC, 1973 issued against the petitioner, was executed by him on 30.07.2013 but the petitioner was not found at her address and as informed by her servant, the petitioner was ill and she was undergoing treatment somewhere in Hyderabad and that the whereabouts of the petitioner were not known to him. The copy of the process was thus pasted at the last known address of the petitioner and one copy at the notice board of the Court, whereafter on 07.08.2013 itself the trial Court issued process under Section 83 Cr.PC, 1973 against the petitioner on being satisfied that the petitioner was absconding and failed to appear in Court despite publication of the proclamation under Section 82 Cr.PC, 1973 and that pursuant to the petition WP(Crl.) 1782/2013 having been filed by the petitioner on 25.10.2013 seeking quashing of proceedings under Sections 82 & 83 of Cr.P.C, 1973 in Complaint Case no. 594/2/2012, vide order dated 30.10.2013 in the said petition, proceedings initiated under Section 82 Cr.P.C., 1973 dated 22.06.2013 and under Section 83 Cr.P.C., 1973 dated 07.08.2013 in Complaint Case No. 594/2/2012 were quashed and vide the said verdict dated 30.10.2013 in WP (Crl.) No. 1782/2013, the petitioner has already been granted liberty to take recourse to such other remedies which may be available to her in accordance with law.

It has been submitted on behalf of the petitioner that despite this order dated 30.10.2013 in WP(Crl.) 1782/2013 disposed off by

this Court, the Investigating Agency did not file a closure report in relation to the FIR No. 316/2013, PS Saket, District South Delhi, copy of which FIR is on the record indicating that the FIR has been registered under Section 174A Indian Penal Code, 1860 and it has been submitted that the process was thus issued by the Court of the CMM, South for presence of the petitioner in the said proceedings despite proceedings under Section 82 & 83 of Cr.PC, 1973 having been quashed in WP(Crl.) 1782/2013 as already stated hereinabove.

It has been submitted on behalf of the petitioner that proceedings in FIR 316/2013, PS Saket registered under Section 174A of Indian Penal Code, 1860, cannot continue now and need necessarily to be quashed in view of the directions dated 31.10.2013 in WP(Crl.) 1782/2013.

On 28.11.2017 and 4.12.2017 submissions were sought to be made on behalf of the State in view of the averments in the present petition. Reliance was sought to be placed by the State on the verdict of this Court in Crl. M.C. 4208/2011 titled as *Maneesh Goomer Vs. State* to contend that the proceedings under Section 174A Indian Penal Code, 1860, in the instant case cannot be quashed inasmuch as proceedings under Sections 82 & 83 of Cr.PC, 1973 had been initiated. It has been submitted further on behalf of the State that the proceedings under Sections 82 & 83 of Cr.PC, 1973 against the petitioner herein vide order dated 30.10.2013 in WP (Crl.) No. 1782/2013 were quashed on the grounds that the petitioner was unwell as indicated vide para-2 of the said proceedings.

On behalf of the petitioner it has been submitted that the

reliance placed on behalf of the State on the verdict of this Court in Crl. M.C. 4208/2011 titled as *Maneesh Goomer Vs. State* (Supra) is on facts distinguishable from the instant case and that the ratio of the verdict in Crl. M.C. 4208/2011 titled as *Maneesh Goomer Vs. State* (Supra) is not on facts in *pari materia* with the present case, which aspect is apparently correct as borne out on a perusal of the verdict in Crl. M.C. 4208/2011 titled as *Maneesh Goomer Vs. State* (Supra) inasmuch as the proceedings under Section 82 of Cr.PC, 1973 in the said case in *Maneesh Goomer Vs. State* (Supra) had not been quashed vide the order of this Court at any stage and rather an application was pending before the Magistrate concerned for recalling of the proclamation under Section 83 Cr.PC, 1973, whereafter a settlement had been arrived at between the parties in that case, as a consequence of which the quashing of the FIR 316/2013, PS Saket registered under Section 174A of Indian Penal Code, 1860 was sought with it having been observed to the effect that the FIR for the offence punishable under Section 174A Indian Penal Code, 1860, was an independent cause of action and merely because the Complaint Case under Section 138 Negotiable Instrument Act was settled, there was no reason that the FIR under Section 174 A Indian Penal Code, 1860, ought to be quashed.

It is essential to observe that the present petition is not based on a compromise and rather on the factum that the proceedings under Sections 82 & 83 of Cr.PC, 1973 on the basis of which the FIR under Section 174A Indian Penal Code, 1860, was registered have already been quashed vide order dated 30.10.2013 of this Court in WP (Crl.)

No. 1782/2013.

Section 174A Indian Penal Code, 1860, read to the effect:

“174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine”.

The terms of thereof make it implicit that the offence punishable under Section 174A of The Indian Penal Code, 1860 is based on the initiation of proceedings under Section 82 of Cr.PC, 1973. The proceedings under Section 83 of Cr.PC, 1973 can also be initiated in circumstances where an accused is absconding and may be thus issued by the Court for reasons to be recorded at any time after issuance of the proclamation under Section 82 of Cr.PC, 1973.

As observed hereinabove, the proceedings under Sections 82 & 83 Cr.PC, 1973 against the petitioner have already been quashed vide order dated 30.10.2013 of this Court in WP (Crl.) No. 1782/2013.

It is thus apparent that the FIR under Section 174A of the Indian Penal Code, 1860 bearing no. 316/2013, PS Saket against the petitioner has necessarily and essentially to be quashed and thus the said FIR and all proceedings emanating therefrom are quashed.

ANU MALHOTRA, J

JANUARY 31, 2018
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