

\$~1

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

+ CRL.A. 1017/2018, CRL MA 33074-75/2018

NARENDER KUMAR Appellant

Through Mr. Manish Aggarwal, Mr. Runul
Rastogi & Ms. Sudha Nim, Advs with
appellant in person
versus

STATE (GOVT OF NCT OF DELHI) Respondent
Through Mr. Rajat Katyal, APP for State

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **15.10.2018**

Supplementary challan was filed by the respondent against the appellant in the Trial Court for the offence punishable under section 3 of MCOCA and section 174 A IPC on 29th November, 2013. By the order impugned in this appeal, that is order dated 6th January, 2014, appellant has been discharged for the offence under section 3 of MCOCA, however, learned Trial Court has observed that a, *prima facie*, case was made out against the appellant for having committed the offence under section 174A IPC. Accordingly, the matter was remitted to learned Chief Metropolitan Magistrate, Delhi for proceeding further in the matter in accordance with law.

Appellant is aggrieved by the order of the learned Trial Court to the effect that a, *prima facie*, case was made out against the appellant for the offence under section 174A IPC, therefore, charge sheet be sent to learned CMM for further trial as per law.

Learned counsel for the appellant submits that it has been mentioned in the charge sheet that appellant along with his family had left the village and started living at some other place unknown to anyone, after his acquittal in the said matter. He was absconding and was declared proclaimed offender vide order dated 14th November, 2011, therefore, when he was arrested under section 3 of MCOCA, section 174A IPC has also been added.

Learned counsel submits that respondent was aware about the new address of appellant. Appellant had filed Crl. M.C. 2671/2011 in this Court on 10th August, 2011 for quashing of FIR No.299/2009 under section 3 of MCOCA registered against him at police station Narela. The said petition was taken up on 12th August, 2011 and notice thereof was issued to the respondent. Learned APP for the State/respondent accepted notice. Despite this, proceedings were initiated against the appellant for declaring him a proclaimed offender. Appellant was declared proclaimed offender vide order dated 14th November, 2011 by the learned Addl. Session Judge concerned during the pendency of Crl. M.C. 2671/2011. Thus, it cannot be said that on the date when appellant was declared proclaimed offender, respondent was not aware about the new address of appellant.

Vide order dated 27th November, 2018, this Court had summoned file of Crl. MC 2671/2011 titled “Narender Kumar vs. State of Delhi”, from the Registry. File has been sent by the Registry and a perusal of the same supports the contentions of the learned counsel. It is evident that as on 12th August, 2011 respondent was aware about the new address of the appellant. Despite this, no efforts were made to

arrest him from his new address.

For the foregoing reasons, I am of the view that no case is made out against the appellant for having committed an offence punishable under section 174A IPC. Accordingly, the impugned order of the trial court, to this effect, is set aside.

Appeal is disposed of in above terms. Miscellaneous applications are disposed of as infructuous.

Dasti.

A.K. PATHAK, J

OCTOBER 15, 2018

sm