

267 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-36363-2017

Date of decision: July 22, 2019

Bittu

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Parveen Kaushik , Advocate
 for the petitioner.

Mr. Deepak Sheoran, DAG, Hayana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No.54 dated 2.2.2017 under Section 174-A IPC, registered at Police Station Sampla, District Rohtak and all the subsequent proceedings arising therefrom.

On 7.5.2018, while issuing notice of motion, the following order was passed :-

“Learned counsel for the petitioner submits that the trial Court, vide order dated 28.10.2016 (Annexure P-5), had issued a proclamation against the petitioner and thereafter, had issued a direction on 28.11.2016 to register an FIR under Section 174-A IPC against co-accused Rakesh @ Lala. It is further submitted that petitioner and his co-accused later on have surrendered before the trial Court on 27.03.2017 and on the same day, they had confessed their guilt and the trial Court, vide

judgment of conviction and order of sentence of even date i.e. 27.03.2017, after holding the petitioner and co-accused Rakesh guilty of offence under Section 33 of the Indian Forest Act, 1927, has directed them to pay compensation of Rs.16,000/- each and to plant 20 trees (10 trees each) in Govt. School at District Jhajjar.

Learned counsel for the petitioner further submits that the said order was duly complied with and a compliance report was also placed on record of the trial Court vide order dated 17.04.2017. Counsel for the petitioner has relied upon the order dated 08.03.2017 (Annexure P-4), vide which the trial Court has directed the Investigating Officer to submit a compliance report regarding registration of the FIR under Section 174-A IPC against accused Rakesh. It is further submitted that there was no such direction for registration of FIR against the petitioner and the police has registered the impugned FIR against both petitioner as well as his co-accused Rakesh.”

Counsel for the petitioner has argued that since the complaint under Section 33 of the Indian Forest Act, 1927 already stands decided vide judgment dated 27.3.2017, based on the confession made by the accused person and followed by the order of sentence vide which the convicts were directed to pay compensation of Rs.16,000/- each and to plant 20 trees (10 trees each), in the Government School at District Jhajjar, which the petitioner has already complied with.

Counsel for the petitioner submits that during the pendency of the said complaint, the trial Court vide order dated 28.10.2016

had issued proclamation against petitioner-Bittu and, thereafter, vide impugned order dated 28.11.2016 directed the police to register an FIR under Section 174-A IPC on account of his non-appearance before the Court, the present impugned FIR was registered against the petitioner.

Counsel for the petitioner has further submitted that the proclamation proceedings were initiated against the petitioner without following the procedure laid down under Sections 82/83 Cr.P.C. as the service upon the petitioner was never effected at his ordinary place of residence and on coming to know about the pendency of the complaint under Section 33 of the Indian Forest Act, 1927, the petitioner has appeared before the trial Court and, later on, he had made a confession, as noticed above.

Reply by way of affidavit of the Deputy Superintendent of Police, Rohtak is on record and as per the reply, the factual position as stated by the petitioner is not disputed. It is further stated that the present FIR was registered in compliance of the order dated 28.11.2016 passed by the trial Court during the pendency of the complaint under Section 33 of the Indian Forest Act, 1927.

After hearing counsel for the parties, I find merit in the present petition.

Admittedly, the complaint under Section 33 of the Indian Forest Act, 1927 stands disposed of, during the pendency of which, the order dated 28.11.2016 was passed vide which a direction was issued to the police to register the impugned FIR.

As the petitioner already appeared before the trial Court and has been convicted and sentenced in the aforesaid complaint under Section 33 of the Indian Forest Act, 1927, I find, in view of the judgment of Vikas Sharma Vs. Gurpreet Singh Kohli and another, 2019 (3) L.A.R. 584, Microqual Techno Limited and others Vs. State of Haryana and another, 2015 (32) RCR (Criminal) 790 and Rajneesh Khanna Vs. State of Haryana and another, 2017(3) L.A.R. 555, that the prosecution of the petitioner in the present FIR under Section 174-A IPC shall be nothing but misuse of process of law.

In view of the same, the present petition is allowed and the impugned FIR No.54 dated 2.2.2017 under Section 174-A IPC registered at Police Station Sampla, District Rohtak, and all other subsequent proceedings arising therefrom, are, hereby, quashed.

(ARVIND SINGH SANGWAN)
JUDGE

July 22, 2019
satish

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No