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

CRM-M-8567-2022

Date of decision : 28.02.2022

Balbir Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Manish Soni, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for setting aside the impugned order dated 02.11.2019 (Annexure P-2) passed by the Sessions Judge, Gurugram, whereby Revision No.32 dated 21.03.2016 filed by the petitioner/complainant has been dismissed.

Challenge has also been made to the order dated 17.02.2016 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Gurugram in Criminal Case No.100 dated 06.08.2015 arising out of FIR No.106 dated 09.04.2015 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Sector-55/56, Gurugram, by virtue of which respondent-accused has been released by

ordering sentence to undergo imprisonment for the period already undergone.

Learned counsel for the petitioner has submitted that in the present case, vide impugned order dated 17.02.2016 (Annexure P-1), although respondent No.2 had been convicted in FIR No.106 under Section 174-A of the IPC but the sentence awarded to him is inadequate inasmuch maximum sentence under Section 174-A of the IPC is 3 years and no reasons have been given for awarding the reduced sentence. It is further submitted that even Criminal Revision has been wrongly rejected by the Sessions Judge, Gurugram. It is argued that the petitioner is 76 years old person and had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”), in which, respondent No.2 was convicted on 30.08.2016, against which, respondent No.2 had filed revision and the Sessions Court had vide order dated 01.04.2017 remanded the matter back to the trial Court under Section 138 of the Act of 1881 and the said order was further challenged by respondent No.2 before this Court by challenging the Criminal Revision No.1689 of 2017, in which, notice of motion was issued and the interim stay was also granted in favour of respondent No.2 and the matter is still stated to be pending.

This Court has heard the learned counsel for the petitioner and has perused the paper book.

The Judicial Magistrate Ist Class, Gurugram, vide order dated 17.02.2016 (Annexure P-1) had convicted respondent No.2 in FIR No.106

dated 09.04.2015 registered under Section 174-A of the IPC at Police Station Sector-55/56, Gurugram. While passing the order of sentence, it was taken into account that the convict was a poor person and the sole bread winner of his family and had made a prayer for taking lenient view. After hearing the parties and considering all the aspects and going through the record, it was observed that since accused had already remained in custody for a period of approximately 2 months and 20 days, thus, the Judicial Magistrate Ist Class, Gurugram, was of the opinion that the interest of justice would be served if convict-respondent No.2 is sentenced to undergo imprisonment for the period, which he has already undergone in custody for the commission of offence under Section 174-A of the IPC and accordingly, the said order was passed. The present petitioner had first filed Criminal Appeal against the said order and on an objection raised by respondent No.2, the same was converted into Criminal Revision. The Sessions Judge, Gurugram, while dismissing the said Criminal Revision filed by the present petitioner had observed in para 8 of its judgment that in para 1 of the grounds, it had been stated by the present petitioner that the order of the trial Court releasing the accused on probation is against the law and facts on the file which has caused great prejudice to the present petitioner. It was observed that the said ground was perverse inasmuch as the petitioner had remained in custody for a period of approximately 2 months and 20 days. It was further observed that *stricto-sensu* the offence punishable under Section 174-A of the IPC is an offence against the administration of justice and the complainant would hardly have locus

standi in such a matter. Paras 8 to 10 of the judgment dated 02.11.2019 (Annexure P-2) passed by the Sessions Judge, Gurugram is reproduced hereinbelow:-

“8. It was argued by learned counsel for the revisionist-complainant that precious time of the Court was wasted and the respondent was involved in several offences and thus, the learned Trial Court was in error in taking a lenient view against the respondent.

If one goes by the pleadings of the revision, the respondent was released on probation. Para No.1 of the grounds of appeal is reproduced for facility of reference:

“That, the order of the Ld. Trial Court releasing accused on probation is against the law and facts on the file which has caused great prejudice to the appellant/complainant.”

From the above, it appears that the learned counsel drafting the appeal had not gone through the impugned order of sentence dated 17.02.2016 wherein it has been mentioned categorically that the accused had remained in custody for a period of approximately two months and 20 days. Learned Trial Court further observed that it was of the opinion that interests of justice would be served if convict was sentenced to undergo imprisonment for the period which he had already undergone for the commission of an offence punishable under section 174-A of the Indian Penal Code, 1860. It appears that the appeal was preferred under the misconception. It was a case punishable under section 138 of the Negotiable Instruments Act, 1881, in which accused was declared a proclaimed person. It was not a heinous offence during the proceedings of which respondent was declared a proclaimed person. The nature

of offence of the case in which respondent was facing the trial was/is such that the offence could be compounded at any stage of the proceedings.

No case was made before the learned Trial Court/this Court about the respondent being wanted in any other case punishable under section 174-A of the Indian Penal Code, 1860. Stricto-sensu the offence punishable under section 174-A of the Indian Penal Code, 1860, is an offence against the administration of justice for which there is hardly any locus-standi with the complainant of the case in which respondent was declared a proclaimed person. Learned Trial Court in the impugned order has not given any reason as to why the benefit of section 360 of the Code of Criminal Procedure, 1973, was not extended to the respondent. Having regard to the totality of the facts and circumstances of the case, this Court is of the considered opinion that there was nothing wrong with the exercise of jurisdiction by the learned Trial Court in the matter of awarding the sentence and thus, there is no case for interference by this Court.

9. No other point was urged before this Court.

10. In view of the aforesaid discussion, there is no merit in the revision petition and there is no factual or legal error in the order passed by the learned trial Court warranting any interference by this Court. Consequently, the revision petition is hereby dismissed.

A copy of this order be sent to the successor Court of Ms. Iram Hasan, the then, learned Judicial Magistrate First Class, Gurugram.”

The impugned order was passed on 17.02.2016 and the Criminal Revision was dismissed on 02.11.2019 and the present petition

has been filed in the month of February, 2022 and thus, there is a delay of more than 2 years and 3 months in filing the present petition. The said delay has not been explained by the present petitioner.

Learned counsel for the petitioner has orally submitted that the said petition was drafted earlier and on account of COVID-19 pandemic, the same could not be filed. A perusal of the petition would show that the petition has been drafted on 15.02.2022. Moreover, on 02.11.2019, when the impugned order was passed, COVID-19 pandemic had not set in and in fact, in cases, where the appeal/revision could be filed, the general period of 90 days, had also elapsed before the COVID-19 pandemic, had set in i.e. in March 2020. The provision of Section 482 of Cr.P.C. under which the present petition has been filed (as there is no provision for appeal/revision against the impugned order), cannot be permitted to circumvent the said period of limitation. Further, although for some period, there were restrictions in filing of the cases but the moment the first wave of COVID-19 pandemic was over, filing of the cases had resumed and no explanation has been given to show as to why, after the first wave of COVID-19 pandemic was over, the present petition was not filed.

It is apparent from the facts agitated by the counsel for the petitioner that respondent No.2 had joined the proceedings under Section 138 of the Act of 1881 and in fact, is pursuing his remedy, inasmuch as after having been convicted on 30.08.2016, respondent No.2 had even filed revision petition before the Sessions Judge, which even as per the counsel for the petitioner, was allowed and the matter was remanded back

vide order dated 01.04.2017, against which respondent No.2 had filed Criminal Revision No.1689 of 2017, which is stated to be pending. The present petition has apparently been filed after a period of 2 years and 3 months from the passing of the impugned order, on account of the fact that respondent No.2 had filed revision petition before the Sessions Court against the remand order vide which the judgment of conviction had been set aside and the matter under Section 138 of the Act of 1881 has not attained finality. Section 174-A of IPC is reproduced hereinbelow:-

“Section 174-A of the Indian Penal Code:-

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.”*

A perusal of the above would show that it has been mentioned in the said provision that the convict could be punished with imprisonment for a term which may extend to three years **or** with fine **or** with both. It is, thus, apparent that, it is open to the trial Court to impose only fine after having convicted the accused under Section 174-A of IPC. In the present case, revision petition in the proceedings under Section 138 of the Act of 1881 is pending and respondent No.2 is persuing the same. The trial Court

had observed in the impugned order that respondent No.2 is a poor person and the sole bread winner of his family and in view of the said facts and circumstances, had thought it appropriate to order the petitioner to undergo the sentence already undergone by the said respondent No.2 i.e. 2 months and 20 days. The Revisional Court had observed that the grounds which were filed by the present petitioner were perverse and the said finding is apparent from the relevant portion of judgment dated 02.11.2019 which has been reproduced hereinabove by this Court.

In view of the abovesaid facts and circumstances, the Court finds that there is no illegality or perversity in the impugned orders passed and thus, deserve to be upheld.

It would be relevant to note that it is the conceded position that against the impugned order in the present case, no appeal/revision is maintainable and the present petition has been filed under Section 482 of Cr.P.C. Once, the Legislature has not intended for providing any remedy of appeal/revision, then, in such circumstances, the Court under Section 482 of Cr.P.C. is only to interfere in a matter where there is gross illegality committed by the Courts below. The same having not been done in the present case, the present petition deserves to be dismissed.

Accordingly, the present petition is dismissed and the impugned orders are upheld.

28.02.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**