

262 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-5352-2020 (O&M)****Date of decision: 05.09.2023**

Divine Infracon Private Limited and others

...Petitioners

VS

UT, Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.Ranbir Singh Hooda, Advocate,
for the petitioners.Mr. Rose Shama, Advocate for
Mr. Anil Kumar Lamdharia, Addl. PP, UT, Chandigarh.

None for respondent no.2, despite service.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing of order dated 14.02.2018 (Annexure P-2) whereby learned Judicial Magistrate First Class, Chandigarh, declared the petitioners proclaimed persons in the proceedings arising out of criminal complaint No.NACT/3015 of 2016 dated 16.04.2016, under Section 138 of Negotiable Instrument Act, 1881.

2. Succinct facts first, as pleaded in the instant petition.

2.1 Petitioner no.1 is a private limited company duly registered under the Indian Companies Act, 1956 and having its Corporate office at Plot No.4, Sector 13, City Center Dwarka, Delhi and petitioner no.1 has authorized Sh. Rajesh Grover, Accounts Manager of company to pursue the present litigation vide resolution dated 26.09.2016. Petitioner no.2 to 3 are the Directors of the aforesaid Company.

2.2. Summons were not served to the petitioners on the official address and respondent no.2 intentionally did not disclose to learned Court below about the official address of the petitioners, reason being petitioners could not be served in the aforesaid complaint under Section 138 of Negotiable Instruments Act and accordingly, vide order dated 14.2.2018(Annexure P-2) petitioners were eventually declared as proclaimed persons.

2.3. Subsequently the matter got compromised by the petitioners with respondent No.2 with the intervention of respectable and business community and accordingly, it was decided by respondent no.2 to withdraw all the complaints pending before learned JMIC, Chandigarh vide registered settlement deed dated 05.03.2018 (Annexure P-3) with effect from 15.1.2018.

2.4. In pursuance to the aforesaid settlement, the petitioners have paid an amount of Rs.4,00,000/- in order to discharge their liability in the instant complaint as well as other complaints pending between both the parties under Section 138 of Negotiable Instruments Act, 1881 specifically recorded in para No. 5 of the settlement deed dated 05.03.2018 (Annexure P-3). In pursuance of the aforesaid settlement, respondent no.2 withdrew different complaints including the instant complaint pending against the petitioners, the details of which are given in paragraph 7 of the instant petition. Hence, the present petition.

3. Learned counsel for petitioners submits that petitioners had no intention whatsoever to avoid the summons issued by learned JMIC Chandigarh. It is further submitted that petitioners were never served in ordinary manner and other mode regarding the proceedings initiated under Section 82 (1) Cr.P.C. and the impugned order dated 14.2.2018 (Annexure P-2) was not passed in accordance with provisions of Section 82 of Cr.P.C. Infact, in order to settle the entire controversy the petitioners have already compromised the matter and the amount had been already paid to respondent No.2, in discharge of their liability by the petitioners, therefore, impugned order dated 14.2.2018 (Annexure P-2) passed by learned JMIC Chandigarh is liable to be quashed.

3.1. Learned counsel for the petitioners has tendered a copy of order dated 10.04.2021 in the course of hearing and the same is taken on record and marked as Annexure- A. As per order dated 10.04.2021 (Annexure-A), the main complaint under Section 138 of the Negotiable Instruments Act, 1881, has already been dismissed as withdrawn.

4. Learned State counsel appears on behalf of respondent-UT, Chandigarh and opposes the prayer made, and submits that learned trial Court rightly declared them as proclaimed offenders as they themselves chose not to appear.

5. None appears on behalf of respondent no.2, which is suggestive of the fact that respondent No.2 has no objection to the instant petition being allowed.

6. Arguments heard.

7. The complaint against the petitioner was for an offence under section 138 of the Act for dishonour of cheque bearing No.394699 dated 17.02.2016 amounting to Rs.1,35,877/-.

8. Vide order dated 14.02.2018 (Annexure P-2), learned Judicial Magistrate First Class, Chandigarh recorded its satisfaction that the accused-petitioners had absconded, declared them as a proclaimed persons and directed that intimation be sent to the concerned police station to initiate proceedings against them under Section 174-A of IPC. In my opinion, the order for registering an FIR itself is not sustainable hereinafter.

9. Reference may be had to judgment rendered by me in ***Pardeep Kumar versus State of Punjab and another***¹ passed in ***CRM-M-41656-2023 (O&M) decided on 23.08.2023*** wherein I have, *inter alia*, opined that the offence under Section 174-A of IPC falls within the scope Section 195(1) (a)(i) of the Code *ibid* which provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Further, it was held that if after declaring an individual as a “proclaimed person” or “proclaimed offender,” the Court decides to proceed against him for an offence under section 174-A of IPC, it has to institute a formal written complaint in the competent jurisdictional court and that the order passed for registering FIR and the FIR so registered in such case were not sustainable in law.

10. In the present case, proceedings under Section 174-A of IPC were not initiated as per guidelines and ratio laid down in Pardeep Kumar judgment *ibid*. As an upshot, it is held that the judgment and order dated 14.02.2018 passed by the learned Magistrate is not sustainable on that ground alone. Neither there is any compliance of the relevant statutory requirements in letter and spirit, for declaring the petitioners proclaimed persons/offenders, nor is the impugned judgment of trial court in terms of the guidelines laid in Pardeep Kumar judgment. For the sake of brevity, the guidelines laid down in Pardeep Kumar judgment are not being reproduced and the same may be referred therefrom. The requisite application of mind by the Court while invoking criminal liability of the petitioner for offence under Section 174-A of IPC is also lacking herein.

11. As submitted by the learned counsel for the petitioners, the entire cheque amount was paid to the complainant and the complaint under section 138 of the Act was withdrawn vide order dated 10.04.2021 (Annexure -A). On withdrawal of the complaint and termination of it's proceedings against the petitioners, the requirement for his appearance in Court also came to an end.

12. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned order dated 14.02.2018 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Chandigarh, and all subsequent proceedings emanating therefrom, are hereby quashed.

13. Hence, the instant petition is allowed.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

05.09.2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No