

CRM-M-7905-2020 (O&M)&
CRM-M-8141-2020 (O&M)
254

2023:PHHC:123454

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7905-2020 (O&M)
Date of decision: 19.09.2023

Anoop Garg and another
.....Petitioners
versus

State of Haryana and another
.....Respondents

CRM-M-8141-2020 (O&M)

Anoop Garg and another
.....Petitioners
versus

State of Haryana and another
.....Respondents

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- Mr.Saransh Sabharwal, Advocate for petitioners.
Mr. Vikas Bhardwaj, AAG, Haryana.
Mr. Arvind Rajotia, Advocate, for respondent no.2.

ARUN MONGA, J. (ORAL)

Vide this common order/judgment, above-mentioned two cases are being disposed of since facts are analogues and issues raised therein are common. For brevity, recitals are taken from CRM-M-7905-2020.

2. Petitioners have impugned summoning order dated 10.04.2017Annexure P-2in CRM-M-7905-2020 and order dated 02.08.2018 (Annexure P-4 in CRM-M-8141-2020)passed by the learned Judicial Magistrate Ist Class, Panipat, vide which they have been declared proclaimed personsin complaint bearing No.CIS-No.783 of 2017andthereafter FIR No.935, dated 01.11.2019 (Annexure P-5) registered under Section 174-A of the IPC, at Police Station Panipat City,District Panipat,and all subsequent proceedings emanating therefrom.

3. Learned counsel for the petitioner submits that respondent no.2 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 on 10.04.2017. Vide impugned order 10.04.2017 Annexure P-2, the petitioners were summoned to face the trial. Due to their non-appearance on 19.03.2018 non-bailable warrants were issued against them which were returned unexecuted and thereafter they were declared proclaimed persons vide order dated 02.08.2018 and FIR no.935 dated 01.11.2019 (Annexure P-5 in CRM-M-8141-2020) under Section 174-A IPC was registered against the petitioners at Police Station Panipat City, District Panipat.

Hence the present petitions.

4. Learned State counsel opposes the prayer made and submits that order declaring petitioners as proclaimed persons has rightly been passed. He further submits that the offence under Section 174-A IPC is independent of the main case.

5. Arguments heard.

6. The complaint against the petitioners was for an offence under section 138 of the Act.

On the last date of hearing, i.e. 27.07.2023, following order was passed:-

“The order sheet reflects that despite enough latitude, the petitioner is not settling the matter with respondent no.1. In the premise, petitioner no.1 is directed to be present in the court on the next date of hearing.

Adjourned to 16.08.2023.

In case the payment alongwith interest at the rate of 6% per annum is made before the next date petitioner no.1 need not to be present.

The order be conveyed to petitioner no.1 by the SHO concerned of the area where he is residing.”

7. Today during the course of hearing a demand draft bearing No.511877 dated 05.02.2020 amounting to Rs.2,85,000/-, which is stated to be towards the principal amount alongwith interest at the rate of 6% per annum, amounting to Rs.1,34,000/- by way of another demand draft No.745576 dated 07.08.2023, has been handed over to learned counsel appearing for respondent no.2, who undertakes to further hand over the same to respondent no.2.

8. Vide order dated 02.08.2018 (Annexure P-4 in CRM-M-8141-2020), learned Judicial Magistrate First Class, Panipat, recorded its satisfaction that the accused-petitioners had absconded, declared them as a proclaimed person and directed that intimation be sent to the concerned police station to initiate proceedings against them under Section 174-A of IPC. Aforesaid FIR was thus registered. In my opinion, the order for registering an FIR itself is not sustainable and fatal to the FIR for the reasons stated 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 02.08.2018 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 petitioners for offence under Section 174-A of IPC is also lacking herein. The said initial order dated 01.03.2018 itself which formed the basis of the registration of the FIR under Section 174-A of IPC against the petitioners and subsequent trial are bad in law.

11. As stated above, the bank drafts for the principal amount and interest of the dishonored cheque have been handed over to the complainant’s counsel and her grievance in the complaint under Section 138 of the Negotiable Instruments Act stands redressed. In this situation, the continuance of the proceedings in that complaint would be an abuse of the process of law and unjust to the petitioners. On termination of the complaint proceedings, the requirement for his appearance in Court would also come to an end.

12. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned order, FIR and all subsequent proceedings emanating therefrom are liable to be quashed.

13. Accordingly, the impugned summoning order dated 10.04.2017(Annexure P-2 in CRM-M-7905-2020) and thereafter declaring the petitioners as proclaimed persons vide order 02.08.2018(Annexure P-4 in CRM-M-8141-2020), are hereby set aside and FIR No.935, dated 01.11.2019, registered under Section 174-A of the IPC, at Police Station Panipat City, District Panipat, alongwith all consequential proceedings arising therefrom against the petitioners, are quashed.

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

15. Photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

19.09.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No