

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M- 11763 of 2022(O&M)
Date of Decision: 16.03.2023

Suresh

...Petitioner

Versus

State of Haryana & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Shilesh Gupta, Advocate
For the petitioner.**

Mr. Naveen Kumar Sheoran, DAG Haryana.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of FIR No.3 dated 02.01.2022 registered under Section 174-A IPC at Police Station Beri, District Jhajjar and order dated 23.02.2022 (Annexure P-3) whereby charges have been framed against the petitioner under Section 174-A IPC by the learned trial Court, along with all consequential proceedings arising thereof.

The brief facts of the case are that the police registered FIR No.54 of 2004 under Sections 302, 323, 148, 149 IPC and Sections 25/27 of Arms Act in Police Station Beri against the petitioner wherein lateron the petitioner was declared as proclaimed person vide order dated 26.11.2004 by the Court concerned. Subsequently, the petitioner was arrested in the main case and thereafter impugned FIR was registered by the police under Section 174-A IPC on 02.01.2022.

The counsel for the petitioner has challenged the impugned FIR (Annexure P-2) and all the consequential proceedings arising thereof on the ground that the petitioner was declared as proclaimed person vide order dated 26.11.2004 (Annexure P-1) whereas offence under Section 174-A IPC was incorporated in Statute book w.e.f. 23.06.2006 and in the light of the Article 20(1) of the Constitution, petitioner cannot be prosecuted for an offence punishable under Section 174-A IPC as the petitioner was declared a proclaimed offender on 26.11.2004, when no such offence was in force in the Indian Penal Code. In support of his contentions, the learned counsel for the petitioner has placed reliance on **Ishrat Hussain Vs. The State of Maharashtra**, 2013(16) RCR(Crl.) 922, wherein the Bombay High Court set aside the conviction and sentence of the accused who was declared proclaimed offender on or about 13.06.2005 and FIR under Section 174-A IPC was registered after coming into force of the said provision of law on 23.06.2006. The counsel for the petitioner further submits that in the given circumstances, Bombay High Court held that the alleged offence under Section 174-A IPC had taken place on or about 13.06.2005 and since the said act has been made punishable w.e.f. 23.06.2006, the entire prosecution of the accused with respect to the alleged offence was patently illegal and in violation of the constitutional guarantee afforded by Article 20.

The present petition is contested by the State counsel who submits that the petitioner absconded in the year 2004 and was arrested in the year 2022 and resultantly FIR under Section 174-A IPC was registered against the petitioner on 02.01.2022 and there is no illegality in the said FIR, which has been registered in accordance with the provisions of law.

I have considered the submissions made by counsel for the parties.

Admittedly, FIR No.54 of 2004 was registered against the petitioner under Sections 302, 323, 148, 149 IPC and Sections 25/27 of Arms Act in Police Station Beri. Thereafter, the petitioner was declared as proclaimed offender by the Court concerned vide order dated 26.11.2004 (Annexure P-1). So, it is evident that the act of failing to appear in pursuance of the proclamation had taken place on 26.11.2004 but such act has been made punishable only w.e.f. 23.06.2006. This Court is of the view that if at the time when the petitioner was declared as proclaimed offender, the said act of the petitioner was not an offence, by virtue of the subsequent amendment, bringing such act within the ambit of an offence, cannot make the petitioner liable of committing such offence because of prohibition against retrospective criminal law imposed by Article 20(1) of Constitution. The same view was taken by Bombay High Court in Ishrat Hussain's case (supra).

So, in the instant case the police was having no power to register impugned FIR dated 02.01.2022 with regard to aforesaid criminal act committed on 26.11.2004 for an offence under Section 174-A IPC, which came into effect only on 23.06.2006. This Court is further of the considered opinion that the continuance of prosecution against the petitioner for an offence under Section 174-A IPC is bad and without jurisdiction.

In view of the above, the instant petition is allowed. Consequently, impugned FIR (Annexure P-2) and consequent proceedings taken therein are hereby quashed.

16.03.2023
Jiten

(KARAMJIT SINGH)
JUDGE

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