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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29145-2022 (O&M)

Date of decision: 13.09.2023

Suresh Pothugunta

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ashutosh Gupta, Advocate,
For the petitioner.

Ms. Svaneel Jaswal, Additional A.G., Haryana.

Dr. Rishipal Singh, Advocate,
For respondent No.2.

ARUN MONGA, J. (ORAL)

The instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of order dated 18.08.2018 (Annexure P-6) passed by learned Judicial Magistrate Ist Class, Kurukshetra whereby petitioner was declared as a proclaimed person in complaint case No.NACT-1243-2016, dated 16.11.2016 under Section 138 of the Negotiable Instruments Act, 1881, and intimation in this regard was sent to the quarter concerned in S.P. Office, Kurukshetra and thereafter FIR bearing No.188 dated 24.06.2021 (Annexure P-7), was registered under Section 174-A of the Indian Penal Code, 1860 (IPC), at Police Station, Thanesar City, District Kurukshetra and all subsequent proceedings emanating therefrom.

2. Learned counsel for the petitioner contends that FIR was registered under Section 174-A of the IPC on account of the petitioner having been declared as 'proclaimed person' vide order dated 18.08.2018. Pursuant to the order dated 18.08.2018, the petitioner has already been arrested and thereafter released on bail. He further submits that absence of the petitioner was on account of the warrants being served on an address at which he has never resided. Petitioner has been shown as

Managing Director of a Company/Firm namely 'Vernasco (Workship via Work)', whereas no such company/firm exists. He further submits that since service of warrants issued by learned Judicial Magistrate Ist Class, Kurukshetra was never executed, therefore, order dated 18.08.2018 declaring him proclaimed person is completely devoid of any merit. He submits that present complaint is not maintainable as the company alleged to be made the main accused does not even exist. At no point, petitioner has claimed himself to be the Managing Director of a company which is rather non-existent as can be checked and verified from the website of Ministry of Corporate Affairs. He further contends that no useful purpose would be served by continuing proceedings under Section 174-A of IPC.

3. Learned State counsel as well as learned counsel for respondent No.2 oppose the prayer made petition and submit that order declaring petitioner as a proclaimed person has rightly been passed. They further submit that the offence under Section 174-A IPC is independent of the main case.

4. Arguments heard.

5. The complaint against the petitioner was for an offence under Section 138 of the Act.

6. Since the main complaint under Section 138 of Negotiable Instruments Act, 1881 instituted by respondent No.2/complainant regarding dishonor of cheques is still pending. Petitioner was regularly appearing in main complaint case in which now he has been granted permanent exemption from personal appearance vide order dated 30.05.2022 passed by learned trial Court.

7. Vide order dated 18.08.2018 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Kurukshetra, recorded its satisfaction that the accused-petitioner had absconded, declared him as a proclaimed person and directed that intimation be sent to the quarter concerned in S.P. Office, Kurukshetra to initiate proceedings against him 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.

8. 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.

9. 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 order dated 18.08.2018 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 petitioner a proclaimed person/offender, 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. The said initial order dated 18.08.2018 itself which formed the basis of the registration of the FIR under Section 174-A of IPC against the petitioner and subsequent trial are bad in law.

10. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned order, FIR and all subsequent proceedings emanating there from are liable to be quashed.
11. Accordingly, the order dated 18.08.2018 (Annexure P-6) is hereby set aside and FIR bearing No.188 dated 24.06.2021 (Annexure P-7), registered under Section 174-A IPC at Police Station, Thanesar City, District Kurukshetra along with all consequential proceedings arising there from against the petitioner, are quashed.
12. Needless to say that petitioner shall appear before learned Court below as and when directed by learned trial Court where the complaint under Section 138 of NI Act is pending and shall pursue the same.
13. Petition is allowed accordingly.
14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

13.09.2023

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No