

CRM-M-29221-2021 (O&M) 2023:PHHC:124017

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29221-2021 (O&M)

Date of decision: 20.09.2023

Nitin Jain and another

....Petitioners

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr.Pardhuman Garg, Advocate for petitioners.

Mr.Karan Garg, AAG., Haryana.

ARUN MONGA, J. (ORAL)

Present petition has been filed under section 482 Code of Criminal Procedure for quashing of order dated 01.03.2018 (Annexure P-1), passed by the Judicial Magistrate Ist Class, Faridabad, whereby petitioners were declared as a proclaimed persons in complaint case No.NACT/4656/2016, dated 21.11.2016 under Section 138 of the Negotiable Instruments Act, 1881, concerned SHO was directed to lodge FIR, thereafter FIR bearing No.429 dated 09.05.2018 (Annexure P-2), was registered under Section 174-A of the IPC, at Police Station Sarai Khawaja, District Faridabad and all subsequent proceedings emanating therefrom.

2. Learned counsel for the petitioners contends that matter stands settled as entire cheque amount has been paid to the complainant/respondent no.2 by the petitioners and complaint case under Section 138 Negotiable Instrument Act, 1881 (for short 'the Act') has also been withdrawn vide order dated 22.05.2018 (Annexure P-5) by the complainant. He further contends that no useful purpose would be served by keeping the present proceedings under Section 174-A of IPC, pending.

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

4. Given the nature of order being passed, there is no necessity to issue notice to respondent no.2, as no serious prejudice would be caused to her. Notice to respondent No.2 is thus dispensed with.

5. Arguments heard.

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

7. Vide order dated 01.03.2018 (Annexure P-1), learned Judicial Magistrate First Class, Faridabad, 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.

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 the judgment and orders dated 01.03.2018 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. 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.

10. 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 22.05.2018 (Annexure P-5). 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.

11. 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.

12. Accordingly, the order dated 01.03.2018 (Annexure P-1) is hereby set aside and FIR bearing No.429 dated 09.05.2018 (Annexure P-2), registered under Section 174-A of the IPC, at Police Station Sarai Khawaja, District Faridabad, along with all consequential proceedings arising therefrom against the petitioners, are quashed.

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

(ARUN MONGA)
JUDGE

20.09.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No