

264 (5)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29292-2021 (O&M)

Date of decision: 29.08.2023

Umesh Kumar Jain and others

....Petitioners

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Pardhuman Garg, Advocate, Mr. A. Mishra, Advocate &
Mr. Parvez Chugh, Advocate
for the petitioners.

Mr. Karan Garg, AAG, Haryana.

None 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 23.10.2017 (Annexure P-1) passed by learned Judicial Magistrate First Class, Faridabad in Complaint No. NACT/4170/2016 dated 15.10.2016 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), whereby petitioners were declared as proclaimed persons and FIR No.0182 dated 18.11.2017 (Annexure P-2), registered under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station Kherifhul, District Faridabad against the petitioners arising from order dated 23.10.2017 (Annexure P-1) and all subsequent proceedings arising therefrom.

2. Learned counsel for petitioners submits that matter stands settled as entire cheque amount has been paid to the complainant and complaint case under Section 138 of the Act has also been withdrawn vide order dated 16.08.2018 (Annexure P-4) by the complainant. He further contends that no

useful purpose would be served by keeping the present proceedings under Section 174A of IPC, pending.

3. 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 174A IPC is independent of the main case.

4. None appears on behalf of respondent No. 2 despite service, which is, thus, deemingly suggestive that he has no objection to the quashing of the FIR in question.

5. Arguments heard.

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

7. Vide order dated 23.10.2017 (Annexure P-1), learned Judicial Magistrate First Class, Faridabad recorded its satisfaction that the accused-petitioners had absconded, declared them proclaimed offenders and directed that intimation be sent to the concerned police station to initiate proceeding 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 order dated 23.10.2017 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 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 petitioners for offence under Section 174-A of IPC is also lacking herein. The said initial order dated 23.10.2017 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 16.08.2018 (Annexure P-4). 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 FIR and all subsequent proceedings emanating therefrom are liable to be quashed.

12. Accordingly, order dated 23.10.2017 (Annexure P-1) is hereby set aside and FIR No.0182 dated 18.11.2017 (Annexure P-2), registered under Section 174-A of IPC, at Police Station Kherifhul, 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.

29.08.2023
Harish Kumar

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No