

264 (18)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32409-2021 (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 FIR No. 0281 dated 31.03.2018 (Annexure P-1), registered under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station Sarai Khawaja, District Faridabad since it is hit by the principle of Double Jeopardy and violative of Article 20(2) of Constitution of India.

2. Learned counsel for the petitioners submits that respondent No. 2 had filed complaint under Section 138 of the Act before learned trial Court on 22.11.2016 against the petitioners regarding dishonour of cheques. Petitioners had not appeared before the learned Court below due to which vide order dated 07.02.2018 (Annexre P-2), petitioners were declared proclaimed persons and further learned trial Court directed the concerned SHO to register a case under Section 174A IPC.

2.1. He further contends that *apropos* order dated 07.02.2018, FIR No. 0181 dated 25.02.2018 (Annexure P-3) was registered against the petitioners under

Section 174A IPC at P.S. Sarai Khawaja, District Faridabad. He further urges that surprisingly on the basis of the same order dated 07.02.2018 (Annexure P-2), another FIR No. 0281 dated 31.03.2018 (Annexure P-1) was registered under Section 174A IPC which amounts to double jeopardy at the same police station. He further submits that another quashing petition bearing No. CRM-M-29297-2021 for setting aside order dated 07.02.2018 (Annexure P-2) passed in FIR No. 0181 dated 25.02.2018 (Annexure P-3) is pending adjudication for today itself.

2.2 Learned counsel for petitioners further contends that even otherwise matter stands settled as entire cheque amount has been paid to complainant and complaint case under Section 138 of the Act has also been withdrawn by the complainant.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. Given the nature of order being passed, there is no necessary to issue notice to respondent No. 2, as no serious prejudice would be caused to him. 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 07.02.2018 (Annexure P-2), 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 07.02.2018 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 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 dated 07.02.2018 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. On withdrawal of the complaint and termination of it's proceedings against the petitioners, the requirement for their 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. Even otherwise, it is a case of double jeopardy arising out of the same complaint case i.e. not appearing in the trial proceedings, two FIRs have been registered; which amounts to double jeopardy.

13. Accordingly, order dated 07.02.2018 (Annexure P-2) is hereby set aside and FIR No.0281 dated 31.03.2018 (Annexure P-1), 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.

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

(ARUN MONGA)
JUDGE

29.08.2023
Harish Kumar

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