

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28502 of 2023
Reserved on 14.09.2023
Date of Decision: 15.09.2023

M. Srinivas @ Srinivas MPetitioner
Vs.
State of Haryana and anotherRespondents

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Arjun Kundra, Advocate for the petitioner.

Mr. Vipul Sherwal, AAG, Haryana.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C is to quash order dated 28.02.2023 (Annexure P.4) passed by learned Judicial Magistrate Ist Class, Faridabad in complaint case bearing No.NACT/41181/2022 titled “*Shreya Gupta Vs. M Srinivas*” under Section 138 of the NI Act as well as subsequent proceedings arising therefrom, whereby petitioner was declared proclaimed person; and also FIR No.726 dated 19.03.2023 (Annexure P.5) registered at Police Station Shivaji Nagar, Gurugram under Section 174-A IPC, on the ground that compromise has already been effected amongst the parties and complaint in question Annexure P.1 has already been withdrawn vide order dated 03.03.2023 (Annexure P.6).

2. Perusal of the paper book would reveal that complaint in question was filed by respondent No.2 – Shreya Gupta to prosecute the petitioner under Section 138 of the NI Act before the learned Judicial Magistrate Ist Class, Gurugram. After recording preliminary evidence, process against the petitioner was directed to be issued vide order dated 08.08.2022 (Annexure P.3) for 27.09.2022. On adjourned date of 27.09.2022, postal receipt was placed on record by the complainant revealing that 30 days’ period has elapsed and there was presumed service of

the petitioner. As petitioner did not appear, bailable warrants against him were directed to be issued for 11.11.2022. On the adjourned date of 11.11.2022, appearance was made by the petitioner through his counsel, who moved an application for exempting the appearance of the petitioner. That application was allowed and matter was adjourned to 15.11.2022 for appearance of the accused- petitioner. Petitioner failed to appear on the adjourned date and so, warrants of arrest were directed to be issued against him. The same remained unexecuted and so proclamation under Section 82 Cr.P.C was directed to be issued vide order dated 20.12.2022 for 28.02.2023. The Executing Constable was directed to appear in the Court on 17.01.2023 for recording his statement. On 17.01.2023, the serving constable made the statement regarding issuance of the proclamation. On 28.02.2023, the date as mentioned in the proclamation for appearance/ surrender of the petitioner, as the petitioner did not surrender, he was declared proclaimed person and consequent to the direction of the Court, FIR No.726 dated 19.03.2023 (Annexure P.5) under Section 174-A IPC was registered at Police Station Gurugram.

3. Learned counsel for the petitioner has drawn attention towards the order dated 03.03.2023 (Annexure P.6), as per which complaint file was taken up in Daily Lok Adalat on an application moved by the complainant for withdrawal of the complaint and based on the statement of counsel for the complainant, the complaint was dismissed as withdrawn.

4. Learned counsel for the petitioner has relied upon judgments of this Court in *Prem Bansal Vs. State of Haryana and another*, CRM-M-7354 of 2022 decided on 22.02.2022, *Ramesh Kumar Vs. State of Haryana and Another* – CRM-M-51450 of 2022 decided on 02.02.2023 and *Jagjit Singh Vs. State Bank of India* – CRM-M-44769 of 2022 decided on 28.09.2022, in

order to contend that once the complaint in question, in which petitioner was declared proclaimed person, has been withdrawn on account of compromise, continuation of the present proceedings under Section 174-A IPC shall be abuse of the process of law and, therefore, the FIR in question and the impugned order whereby the petitioner was declared proclaimed person, be quashed.

5. Learned State Counsel has vehemently opposed the prayer by submitting that proceedings under Section 174-A IPC are independent of the proceedings under Section 138 of the NI Act. Learned state counsel contends that the complaint under Section 138 of the NI Act was a private affair between the petitioner (accused) and respondent No.2 (complainant). The State had nothing to do with those proceedings. However, once the petitioner was declared proclaimed person by following due process of law as enshrined in Section 82 Cr.P.C., and consequent to declaring the petitioner as a proclaimed person, FIR is registered under Section 174A IPC, it becomes a matter between the accused (petitioner herein) and the State, with which complainant has no concern. Learned State Counsel submits that in such circumstances, merely because the complaint under Section 138 of the NI Act has been withdrawn, in which the petitioner was declared proclaimed person, cannot in itself be a ground to quash the FIR under Section 174-A IPC.

6. This Court finds itself in agreement with the contentions raised by learned State Counsel. State is not a party in the proceedings under Section 138 of the NI Act, which is a private affair between the complainant and the accused. However, if during the proceedings of that complaint, the accused is declared proclaimed person by lawful order passed by the Court and consequent thereto, FIR under Section 174-A IPC is registered, then it

becomes a matter between the State and the accused, who had been declared as proclaimed person.

7. [Section 174A](#) of the Indian Penal Code, 1860 reads as under:

"174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.-- Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of [section 82](#) of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub- section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine."

8. Bare perusal of aforesaid provision would reveal that [Section 174A](#) IPC is divided into two parts. First part deals with the situation where the proclamation is issued under [Section 82\(1\)](#) Cr.P.C. and when the accused failed to appear despite its publication, he is to undergo imprisonment upto three years or with fine or with both. The second part of [Section 174A](#) relates to the declaration issued by the Court under [Section 82\(4\)](#) Cr.P.C. wherein serious offences have been prescribed and despite declaring a person as proclaimed offender, when he fails to appear, the punishment provided is imprisonment upto seven years and payment of fine.

9. The legislature, in order to curb the tendency on the part of criminals not to attend the investigation or the court to face trial, in response to the proclamation published under Section 82 Cr.P.C and seeing the growing number of Proclaimed offenders inserted [Section 174A](#) IPC by way of Clause 44 of the CrPC. (Amendment) Act, 2005 (25 of 2005) which was brought into force w.e.f. 23rd June, 2006 vide Notification No. SO 923(E) dated 21st June, 2006, hoping that it would be a deterrent for persons fleeing

from justice. Thus, object and purpose to incorporate [Section 174A](#) IPC primarily is to ensure that the accused / suspects do not scuttle investigation or trial by remaining absconding without valid or sufficient reasons. In such a scenario, when the suspects or accused abscond, possibility of valuable evidence to be washed away cannot be ruled out. Since non-appearance of accused in response to the proclamation under [Section 82](#) CrPC has been made a substantive offence, the provisions of [Section 174A](#) IPC are required to be invoked against absconding accused.

10. Merely because the complaint, in which the accused was declared proclaimed person has since been withdrawn, cannot be a ground to quash the FIR; otherwise the entire objective of registration of FIR under Section 174-A IPC consequent to the declaring an accused as proclaimed person, would be frustrated. It would become very easy for an accused to stay absent from the proceedings in the complaint case, in which he is declared proclaimed person and later on, move the Court for quashing the FIR on the ground of compromise.

11. In the present case, as the facts noticed above would reveal, the petitioner was very well aware of the proceedings in the complaint case, in which he had even made appearance through his counsel on 11.11.2022. The said fact is fairly conceded by learned counsel for the petitioner. Learned counsel for the petitioner has further conceded the fact that there is no violation of Section 82 Cr.P.C and all the mandatory requirements contained therein were duly complied.

12. Having regard to the afore-said discussion, this Court finds no justification to quash the FIR No.726 dated 19.03.2023 (Annexure P.5)

registered at Police Station Shivaji Nagar, Gurugram under Section 174-A
IPC. As such, the present petition is dismissed.

September 15, 2023
renu

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No