

264 (28th case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34192-2021 (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.') seeking quashing of order dated 16.02.2018 (Annexure P-1) passed by learned Judicial Magistrate First Class, Faridabad in Complaint No. NACT/4740/2016 dated 28.11.2016 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), whereby petitioners were declared as proclaimed persons and FIR against them under Section 174-A of the IPC, has been ordered to be registered, alongwith all consequential proceedings arising therefrom.

2. Learned counsel for the petitioners contends that matter stands settled as entire cheque amount has been paid to complainant/respondent No.2 and complaint case under Section 138 of the Act has also been withdrawn vide order dated 16.05.2018 (Annexure P-3) by the complainant. He further contends that during the pendency of the complaint case the petitioners were declared proclaimed offenders vide impugned order dated 16.02.2018 (Annexure P-1).

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 174-A 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 were for an offence under Section 138 of the Act.

7. Vide order dated 16.02.2018 (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. In my opinion, the very order for registering an FIR itself is not sustainable 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.

¹ 2023 Live Law (PH) 181

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 16.02.2018 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.

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 16.05.2018 (Annexure P-3). On withdrawal of the complaint and termination of its 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 order dated 16.02.2018 (Annexure P-1) passed by the learned Judicial Magistrate First Class, Faridabad, and all subsequent proceedings emanating therefrom are liable to be quashed.

12. Accordingly, the aforesaid order dated 16.02.2018 (Annexure P-1) is hereby set aside and all consequential proceedings arising therefrom against the petitioners, stands quashed.

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

(ARUN MONGA)
JUDGE

29.08.2023

Jyoti Thakur

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