

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:083192
CRM-M-29582-2023
Date of Decision: July 03, 2023

Sunita Sharma

...Petitioner

Versus

The State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rahul Vats, Advocate for the petitioner.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition is to quash FIR No.1246, dated 19.08.2022, registered at Police Station Shivaji Nagar, District Gurugram, under Section 174-A of IPC and the final report in the said FIR.

Though, quashing of the FIR and the quashing proceedings are sought on the different grounds mentioned in the petition, but before this Court, attention is drawn by learned counsel towards the fact that criminal complaint titled as *“Sh. Sandeep Kumar v. Ms. Anita Sharma (Prop.), M/s Sharma Paints and H/w Store”* was filed by respondent No.2 Sandeep Kumar for prosecution of Anita under Section 138 of the Negotiable Instruments Act, 1881.

After recording preliminary evidence, summons to accused Anita Sharma, Proprietor of M/s Sharma Paints and H/w Store were issued and as the same remained unserved, bailable warrants, then warrants of arrest and then ultimately the proclamation under Section 82 Cr.P.C. was issued. As despite proclamation, the accused of the complaint case did not appear, she was declared proclaimed person vide order dated 04.05.2022 and direction was given to the concerned S.H.O.

to register a separate FIR under Section 174-A IPC. Consequent to the directions, FIR was registered wherein also the name of the accused is mentioned to be Anita.

Learned counsel has pointed out that later on, after registering the FIR, an application was moved by the complainant stating therein that correct name of the accused was Sunita, proprietor of M/s Sharma Paints and H/w Store, but inadvertently it was mentioned as Anita Sharma. The correction was allowed. S.H.O. was also directed to make necessary correction in the FIR and the name of Anita Sharma was directed to be changed as Sunita Sharma. It is only thereafter that final report under Section 173 Cr.P.C. was filed against Sunita Sharma (petitioner) to prosecute her under Section 174-A IPC.

Learned counsel for the petitioner further contends that petitioner was produced before the concerned Magistrate in custody in the complaint case, where she was allowed bail. Matter was compromised and the complaint under Section 138 of N.I. Act, was dismissed as withdrawn, vide order dated 21.01.2023.

Learned counsel for the petitioner contends that as it is Anita Sharma, who was summoned by way of notice and then warrants and then proclamation and not petitioner Sunita Sharma and so her prosecution under Section 174-A IPC is bad in law. Not only this, even if it be assumed that name of the accused was wrongly mentioned that complaint has already been compromised.

Notice of motion.

Mr. Randhir Singh, Addl. A.G., Haryana, accepts notice on behalf of respondent-State.

The factual position as disclosed by learned counsel for the petitioner is not rebutted by learned State counsel, which even otherwise also is evident on bare perusal of paper book and the documents annexed therewith.

Having considered submissions of learned counsel for the petitioner, I find merit in the petition.

As noticed above, it is Anita Sharma, to whom summons were issued in the complaint case and against whom warrants and then proclamation were issued. It was Anita Sharma, who was declared proclaimed person and against whom FIR under Section 174-A IPC was registered.

In these circumstances, petitioner, namely Sunita Sharma cannot be prosecuted under Section 174-A IPC on the ground that her name was wrongly mentioned as Anita Sharma.

In view of the above discussion, present petition is allowed. Consequently, FIR No.1246, dated 19.08.2022, registered at Police Station Shivaji Nagar, District Gurugram, under Section 174-A of IPC, the final report in the said FIR and all consequent proceedings are hereby quashed.

July 03, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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