

264**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-34720-2023 (O&M)****Date of decision: 19.09.2023**

Bajrang

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.Yogesh Jhangra, Advocate for petitioner.

Mr. Karan Garg, A.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Present petition has been filed under Section 482 Code of Criminal Procedure for quashing of an impugned order dated 10.03.2023 (Annexure P-3) passed by the learned JMIC, Sirsa in Complaint Case No.NACT-1162-2018, vide which petitioner has been declared proclaimed offender and FIR No.271, dated 17.03.2023 (Annexure P-4) registered under Section 174-A of the IPC, at Police Station Civil Lines, District Sirsa, alongwith all subsequent proceedings emanating therefrom.

2. Learned counsel for the petitioner contends that matter stands settled as the complainant has suffered a statement to the effect that he does not want to proceed further and the complaint case under Section 138 Negotiable Instrument Act, 1881 (for short 'the Act') has also been withdrawn vide order dated 09.09.2023, which has been produced during the course of hearing and is taken on record as Mark –'A'. He further contends that no useful purpose would be served by keeping the present proceedings pending.

3. Learned State counsel opposes the prayer made and submits that order declaring petitioner as a proclaimed person has rightly been passed. He further submits that the offence under Section 174-A IPC is independent of the main case.

4. Arguments heard.

5. The complaint against the petitioner was for an offence under section 138 of the Act.

6. Vide order dated 10.03.2023 (Annexure P-3), learned Judicial Magistrate First Class, Sirsa, recorded its satisfaction that the accused-petitioner had absconded, declared him as a proclaimed person and directed that intimation be sent to the concerned police station to initiate proceedings against him 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.

7. 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.

8. 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 orders dated 10.03.2023 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 petitioner 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 petitioner for offence under Section 174-A of IPC is also lacking herein. The said initial order dated 07.11.2022 itself which formed the basis of the registration of the FIR under Section 174-A of IPC against the petitioner and subsequent trial are bad in law.

9. As submitted by the learned counsel for the petitioner, the matter has been settled as the complainant has suffered a statement to the effect that he does not want to proceed further and the complaint case under Section 138 Negotiable Instrument Act, 1881, has also been withdrawn vide order dated 09.09.2023 (Mark –‘A’). On withdrawal of the complaint and termination of it’s proceedings against the petitioner, the requirement for his appearance in Court also came to an end.

10. 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.

11. Accordingly, the order dated 10.03.2023 (Annexure P-3) as also the FIR No.271, dated 17.03.2023, (Annexure P-4) registered under Section 174-A of the IPC, at Police Station Civil Lines, District Sirsa, along with all consequential proceedings arising therefrom against the petitioner, are quashed.

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

(ARUN MONGA)
JUDGE

19.09.2023
‘D’vir

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