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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42472-2020

Date of decision: 01.09.2023

Manoj Kumar

....Petitioner

versus

State of Punjab and another

....Respondents

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

Mr. Madhur Sharma, AAG, Punjab.

None for respondent No.2 despite service.

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 FIR No.9 dated 24.01.2019 (Annexure P-1), registered under Section 174-A of the Indian Penal Code, 1860 (for short 'IPC'), at P.S. Sangat, District Bathinda against the petitioner arising from Criminal Complaint No.COMI/117/2016, under Section 138 of the Negotiable Instruments Act, 1881, and all consequential proceedings arising there from out of said FIR.

2. Learned counsel for the petitioner contends that matter stands settled as entire cheque amount has been paid to the complainant/respondent no.2 by the petitioner and complaint case under Section 138 Negotiable Instrument Act, 1881 (for short 'the Act') has also been withdrawn vide order dated 12.06.2019 (Annexure P-7) by the complainant. He further contends that no useful purpose would be served by keeping the present proceedings under Section 174-A of IPC, pending.

3. Learned State counsel opposes the prayer made and submits that order declaring petitioners 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. None appears on behalf of respondent No. 2 despite service, which is, thus, deemingly suggestive of the fact that respondent No.2-Bank has no objection to the instant petition being allowed.

5. Arguments heard.

6. Vide order dated 10.01.2019, learned Judicial Magistrate First Class, Talwandi Sabo recorded its satisfaction that the accused-petitioner had absconded, declared him proclaimed offender and directed that intimation be sent to the concerned police station to initiate proceeding against him under Section 174-A of IPC.

In my opinion, the very order for registering an FIR itself is not sustainable 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 order dated 10.01.2019 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

¹ 2023 Live Law (PH) 181

criminal liability of the petitioners for offence under Section 174-A of IPC is also lacking herein.

9. As submitted by the learned counsel for the petitioner, the entire cheque amount was paid to the complainant and the complaint under Section 138 of the Act was withdrawn vide order dated 12.06.2019 (Annexure P-7). 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.

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 FIR No.9 dated 24.01.2019 (Annexure P-1), registered under Section 174-A of the Indian Penal Code, 1860 (for short ‘IPC’), at P.S. Sangat, District Bathinda, alongwith all consequential proceedings arising there from against the petitioner, is quashed.

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

(ARUN MONGA)
JUDGE

01.09.2023
Jyoti Thakur

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