

118**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-41946-2023 (O&M)****Date of decision: 24.08.2023**

Nitin Nagpal

....Petitioner

versus

State of Haryana and another

....Respondents

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

Ms. Svaneel Jaswal, Addl.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Present petition has been filed under section 482 of Code of Criminal Procedure, 1973 (for short Cr.P.C.), for quashing of FIR No.395, dated 04.06.2023, registered under Section 174-A of IPC, at Police Station Urban Estate, District Hisar Annexure P-1 upon order dated 30.05.2023 Annexure P-2 being passed by the learned JMIC, Hisar, and all subsequent proceedings emanating therefrom.

2. Learned counsel for the petitioner contends that when the police personnel informed the petitioner regarding registration of aforesaid FIR, he surrendered before the duty Magistrate/Vacation Judge and got concession of regular bail in both matters, i.e. complaint case as also in aforesaid FIR, *vide* orders dated 23.06.2023 (Annexures P-3 and P-4).

3. He further submits that now the proceedings under Negotiable Instruments Act, has been regularized by the trial Court and complaint case has been restored to its original number, which is now fixed for recording his statement under Section 313 Cr.P.C *vide* order dated 01.08.2023 Annexure P-5.

4. 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 174A IPC is independent of the main case.

5. Arguments heard.

6. The complaint against the petitioner was for an offence under section 138 of the Negotiable Instruments Act.

6.1 Vide order dated 30.05.2023 Annexure P-2 passed by the learned Judicial Magistrate, Hisar, recorded its satisfaction that the accused-petitioner had absconded, declared them proclaimed person and directed that intimation be sent to the concerned police station to initiate proceeding against them under section 174-A of IPC. FIR No.395 dated 04.06.2023 (Annexure P-1) was thereupon registered at Police Station Urban Estate, District Hisar, stating that the Court had declared the petitioner a proclaimed person. In my opinion, the very order declaring the petitioner a proclaimed person was/is not legal.

6.2 Section 82(1) of the Code of Criminal Procedure provides that if any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. The provisions for declaring a person as proclaimed offender are contained in sub section (4) of the section 82 *ibid*. It lays down that where a proclamation published under sub-section (1) is in respect of person accused of offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the IPC, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

6.3 The complaint against the petitioner under Section 138 of the Act was for an offence other than aforesaid offences specified in sub section (4) of the section 82 *ibid*. This being the position, the order dated 05.07.2017 Annexure P-2 passed by the learned Judicial Magistrate, Gurugram declaring the petitioner a proclaimed person was/is not

legal. The said order is the basis of the registration of the FIR under section 174A IPC against the petitioner and is, therefore, fatal to the FIR.

6.4 Moreover, the complaint under Section 138 of the Act has already been withdrawn following payment of the due amount by the petitioner to the complainant. Present proceedings under section 174-A IPC against the petitioner are consequential to the proclamation under section 82 Cr.P.C issued in the proceedings of the said complaint.

7. 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.

8. Accordingly, FIR No.395, dated 04.06.2023, registered under Section 174-A of the IPC, at Police Station Urban Estate, District Hisar, alongwith all consequential proceedings arising therefrom against the petitioner, is quashed.

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

(ARUN MONGA)
JUDGE

24.08.2023
'D'vir

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