

130**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-44244-2023 (O&M)****Date of decision: 04.09.2023**

Pankaj Dayal

....Petitioner

versus

State of Haryana and another

....Respondents

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

Ms.Svaneel Jaswal, Addl.AG., Haryana.

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**ARUN MONGA, J. (ORAL)**

Present petition has been filed under Section 482 Code of Criminal Procedure for quashing of order dated 07.06.2017 (Annexure P-1) passed by the Judicial Magistrate First Class, Karnal, whereby petitioner was declared as a proclaimed person in a complaint case No.NACT/298/2016, dated 30.03.2016, under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and FIR against him was ordered to be registered, alongwith all subsequent proceedings emanating therefrom.

2. Notice of motion.

3. On advance service of copy of petition, learned State counsel appears and accepts notice on behalf of respondent-State of Haryana.

4. Given the nature of order being passed, there is no necessity to issue notice to respondent No.2, as no serious prejudice would be caused to her. Notice to respondent No.2 is thus dispensed with.

5. Learned counsel for the petitioner contends that matter stands settled as entire has been paid to the complainant/respondent no.2 and complaint case under Section 138 Negotiable Instrument Act, 1881 has also been withdrawn vide order dated 17.10.2018 (Annexure P-3). He further contends that during the pendency of complaint

case the petitioner was declared proclaimed offender vide impugned order dated 07.06.2017 (Annexure P-1).

6. 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.

7. Arguments heard.

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

9. Vide order dated 07.06.2017 (Annexure P-1), learned Judicial Magistrate First Class, Karnal 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. In my opinion, the order for registering an FIR itself is not sustainable hereinafter.

10. Reference may be had to judgment rendered by me in *Pardeep Kumar versus State of Punjab and another*<sup>1</sup> 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.

11. 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 07.06.2017 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.

12. 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 17.10.2018 (Annexure P-3). 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.

13. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned order dated 07.06.2017 (Annexure P-1) passed by the learned Judicial Magistrate Ist Class, Karnal, and all subsequent proceedings emanating therefrom are liable to be quashed.

14. Accordingly, the aforesaid order dated 07.06.2017 (Annexure P-1) is hereby set aside along with all consequential proceedings arising therefrom against the petitioner, are quashed.

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

(ARUN MONGA)  
JUDGE

04.09.2023  
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| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |