

107

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2008-2023

Date of decision: 11.09.2023

Pradeep @ Pale

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. R.K. Girdhwal, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)**CRM-37851-2023**

For the reasons stated in application, same is allowed. Delay of 58 days in filing the criminal revision is hereby condoned, subject to all just exceptions.

CRR-2008-2023

Revision herein is sought against judgment and order dated 09.12.2022 passed by learned Judicial Magistrate First Class, Bahadurgarh whereby petitioner was convicted for committing an offence under Section 174-A IPC and was sentenced to undergo rigorous imprisonment for two years. Aggrieved, he preferred an appeal before the learned Additional Sessions Judge, Jhajjar, the same was also dismissed in default vide order dated 10.04.2023 .

2. Succinct relevant facts first, as pleaded in the petition.

2.1 Accused-petitioner is an under trial in a case FIR No. 05 dated 28.11.2018, under Sections 379-B & 392 IPC and Section 25 Arms Act registered at Police Station Sadar Bahadurgarh titled '*State vs. Jasbir alias Jasa & others*'. Accused-petitioner was declared a proclaimed offender vide order dated 02.11.2019 by learned Judicial Magistrate First Class, Bahadurgarh. He was charge-sheeted under Section 174-A IPC, to which he pleaded not guilty and

claimed trial. Learned trial Court, on conclusion of trial, held accused/petitioner as guilty for the commission of the offences punishable under Section 174-A of the IPC. Accordingly, learned trial Court convicted and sentenced him vide impugned order dated 09.12.2022 .

3. Aggrieved against the impugned judgment of conviction dated 09.12.2022, appeal was filed by the convict (petitioner herein), which was dismissed in default, vide order dated 10.04.2023, passed by learned Additional Sessions Judge, Jhajjar.

4. Learned counsel for the petitioner submits that Court of JMIC failed to take into consideration that the mandatory period of 30 days was not complied with, as the petitioner was in custody in some other case at the time of declaring him as a proclaimed offender. It also failed to take into consideration that benefit of doubt always goes in favour of accused. He further urges that the only purpose of Section 174-A of IPC was to produce the accused in Court. However, when the accused was already in custody, there is no purpose to register fresh case under Section 174-A IPC. He further submits that proper procedure was not followed to declare the accused as a proclaimed offender. Learned trial Court mis-appreciated the evidence led by the prosecution. Evidence adduced does not prove the guilt/conviction of the appellant beyond reasonable doubt. Therefore, the conviction cannot be sustained.

5. Per contra, learned counsel appearing for the State contends that learned Judicial Magistrate First Class, Bahadurgarh after considering the evidence and material on record rightly convicted and sentenced the petitioner. He further contends that petitioner is involved in several other cases and in one case, he has also been convicted under Section 379-B IPC.

6. I have heard the rival contentions of learned counsel for the parties and have perused the case file.

7. Reference may be had to judgment rendered by me in "**Pardeep Kumar versus State of Punjab and another CRM-M-41656-2023 (O&M)**"¹ 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 09.12.2022 passed by the learned Magistrate is not sustainable on that ground alone. Consequently, order dated 10.04.2023 passed by learned Additional Sessions Judge, Jhajjar upholding the judgment of JMIC is also not sustainable. 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 02.11.2019 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. Said order dated 02.22.2019 is fatal to the registration of the FIR.

9. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned judgment of conviction and order of sentence dated 09.12.2022 passed by learned trial Court and order dated 10.04.2023, upholding the same, passed by learned Additional Sessions Judge, Jhajjar are not sustainable and same are thus set aside. Petitioner is acquitted of the charges levelled against him and be released from custody, if not required in any other case.

10. Instant revision petition is thus allowed.

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

(ARUN MONGA)
JUDGE

11.09.2023
Harish Kumar

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