

132**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-46074-2023(O&M)****Date of decision:14.09.2023**

Jaspal Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. B.S. Jaswal, Advocate for the petitioner.

Mr. Dhruv Dayal, Additional AG Punjab.

ARUN MONGA, J. (ORAL)

Present petition has been filed under Section 482 Code of Criminal Procedure for quashing of FIR No.206, dated 14.07.2023, registered under Section 174-A of the IPC, at Police Station, Division-B, Police Commissionerate, Amritsar, arising out of complaint case No.NACT/706/2021 under Section 138 of Negotiable Instruments Act, 1881, and 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 Punjab.

4. Learned counsel for the petitioner contends that matter stands settled vide compromise (Annexure P-4) and the entire cheque amount has been paid to the complainant-Sukhdev Singh by the petitioner and complaint case under Section 138 Negotiable Instrument Act, 1881 (for short the 'Act'), has also been withdrawn by the complainant, vide order dated 04.09.2023, which is yet not been uploaded on the website of District Court, Amritsar. However, updated status of the complaint case is annexed as Annexure P-5. He further contends that no useful purpose would be served by keeping the present proceedings under Section 174-A of IPC, pending.

5. 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.

6. Arguments heard.

7. The complaint against the petitioner was for an offence under Section 138 of the Act.

8. Vide order dated 18.10.2022 (Annexure P-3), learned Judicial Magistrate Ist Class, Amritsar recorded its satisfaction that the accused-petitioner had absconded, declared him proclaimed person 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.

9. 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.

10. 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 18.10.2022 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

¹ 2023 Live Law (PH) 181

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

11. 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 04.09.2023. 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.

12. Considering the aforesaid facts and circumstances, I am of the opinion that the impugned order, FIR and all subsequent proceedings emanating therefrom are liable to be quashed.

13. Accordingly, FIR No.206, dated 14.07.2023, registered under Section 174-A of the IPC, at Police Station, Division-B, Police Commissionerate, Amritsar, along with all consequential proceedings arising therefrom against the petitioner, are quashed.

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

(ARUN MONGA)
JUDGE

14.09.2023
Jyoti Thakur

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether reportable:</i>	<i>Yes/No</i>