

CRM-M-47329-2023 (O&M)

114

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47329-2023 (O&M)

Date of decision: September 21, 2023

Satish Kumar Sihag

....Petitioner

versus

State of Haryana and another

....Respondents

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

Ms. Svaneel Jaswal, Additional AG Haryana.

Mr. Bhupeshwar Jaswal, Advocate for

Mr. Gagandeep Singh Sirphikhi, Advocate for respondent No.2.

ARUN MONGA, J. (ORAL)

Petition herein is under section 482 Code of Criminal Procedure for quashing FIR No.1207 dated 16.12.2022, under Sections 174-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station, Civil Lines, Sirsa, District Sirsa, along with consequential proceedings arising therefrom, as the complaint filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') has been dismissed as withdrawn vide order dated 09.09.2023 (Annexure P-5) on the basis of compromise arrived at between the parties. Further, sought quashing of order dated 05.12.2022 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Sirsa, whereby petitioner was declared as a proclaimed person.

2. Petitioner was declared proclaimed person, vide order dated 05.12.2022, in a complaint case filed under Section 138 of NI Act by the complainant for dishonour of cheque amount of Rs.1,90,000/-. Due to business compulsion, petitioner used to remain outside the town for most of the time. Basis thereof, impugned FIR under Section 174-A of IPC has been registered against the petitioner. During pendency of proceedings, matter has been settled between the parties. Respondent No.2/ complainant suffered a statement before Court below on 02.09.2023 to this effect. In view of said statement, matter was

CRM-M-47329-2023 (O&M)

ordered to be put up before National Lok Adalat. On 09.09.2023, complaint under Section 138 of NI Act was dismissed as withdrawn, on the basis of compromise.

3. Learned counsel contends that since complaint itself has been dismissed as withdrawn, no purpose would be served by keeping proceedings alive *qua* proclamation as well as FIR under Section 174-A of IPC against the petitioner.

4. Notice of motion.

5. On advance service of copy of petition, learned State counsel appears and accepts notice on behalf of respondent No.1-State of Haryana. She opposes the petition and submits that order declaring petitioner as a proclaimed person has rightly been passed. Offence under Section 174-A IPC is independent of the main case.

5.1. Mr. Bhupeshwar Jaswal, Advocate for Mr. Gagandeep Singh Sirphikhi, Advocate appears on behalf of respondent No.2 and admits the factum of compromise arrived between the parties and also factum of withdrawing of complaint vide order dated 09.09.2023 (Annexure P-5). He also submits that respondent No.2/ complainant has no objection, in case FIR in question against petitioner and proclamation order issued against him, are quashed.

6. I have heard learned counsel for the parties and gone through the case file.

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

8. Vide order dated 20.03.2023 passed by learned Judicial Magistrate Ist Class, Ambala, recorded its satisfaction that the accused-petitioner had absconded, declared him as a proclaimed persons and directed that intimation be sent to the concerned police station to initiate proceedings against him under section 174-A of IPC. Aforesaid FIR was registered, alleging that the Court had declared the petitioner proclaimed person. In my opinion, the order for registering an FIR and the FIR so registered are not legal.

9. Reference may be had to judgment rendered by me in Pardeep Kumar versus State of Punjab and another 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*

CRM-M-47329-2023 (O&M)

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 05.12.2022 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Sirsa 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. The said initial order dated 05.12.2022 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.

11. As submitted by the learned counsel for the petitioner, the matter has been settled between the parties and the complaint under section 138 of the Act was withdrawn vide order dated 09.09.2023. 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.

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

September 21, 2023
mahavir

Whether reportable:	Yes/No
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